11

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913

No. 46

JAMES H. WORK, APPELLANT,

vs.

THE UNITED GLOBE MINES.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF ARIZONA.

FILED JUNE 20, 1911.

(22,745)

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In the Supreme Court of the Territory of Arizona.

No. 1009.

JAMES H. WORK, Plaintiff in Error,
vs.
THE UNITED GLOBE MINES, a Corporation, Defendant in Error.

In Error to the District Court of Gila County.

Francis M. Hartman, Esq., attorney for Plaintiff in Error.
William Herring, Esq., Sarah J. H. Sorin, and E. E. Ellinwood, Esq., (of the firm of Herring, Sorin & Ellinwood), attorneys for Defendant in Error.

Be it remembered that on to-wit the twenty-second day of March, 1907, came the plaintiff in error in the above entitled cause, by his attorney, Francis M. Hartman, Esq., and filed in the clerk's office of said court, in said entitled cause, a certain Abstract of Record in words and figures following, to-wit:

1 In the Supreme Court of the Territory of Arizona.

JAMES H. WORK, Plaintiff in Error,
vs.
THE UNITED GLOBE MINES, a Corporation, Defendant in Error.

Abstract of Record.

Plaintiff for his complaint alleges that he is now and has been continuously for more than twenty-five years last past a resident of the City of New York, State of New York.

That the defendant is a corporation duly incorporated under and by virtue of the Laws of — and has a duly appointed legal
2 agent residing at Globe, Gila County, Arizona Territory.

That the plaintiff is now and has been for a long period of time the owner of the following described real estate lying and being in said County of Gila, Territory of Arizona, to-wit: That certain patented mine situate in Globe Mining District, and bounded and described as follows: Beginning at a pine post three inches square marked O. D. No. 1, a monument of stones around it, being at rock on edge of open cut and shaft at bottom of same, thence First Course along Northeast boundary of the Big Johny Mine South 51 degrees, 30 minutes East three hundred feet to the Southeast corner of the claim, a cedar post three inches square marked O. D. No. 2, a monument of stones around it, the same being the Northeast corner of said Big Johnny claim from which United States Mineral Monument No. 2 Globe Mining District bears South 1 degree, 40 minutes West

four thousand and ninety-five feet distant. Shaft No. 2 bears North 9 degrees, 5 minutes West three hundred and fifteen feet distant and Shaft No. 3 bears North 6 degrees, 16 minutes west three
3 hundred and forty feet distant. Thence Second Course North 31 degrees, 30 minutes East fifteen hundred feet to the Northeast corner of the claim, a cedar post three inches square marked O. D. No. 3, a monument of stones around it, the same being the Southeast corner of the Kennedy Mine. Thence Third Course North 51 degrees, 30 minutes West three hundred feet to a cedar post four inches square marked O. D. No. 4, a monument of stones around it, six hundred feet to the Northwest corner of the claim, a cedar post four inches square marked O. D. No. 5, a monument of stones around it, the same being the Southwest corner of said Kennedy Mine. Thence Fourth Course South 31 degrees, 30 minutes West fifteen hundred feet to Southwest corner of the claim, a cedar post four inches square marked O. D. No. 6 a monument of stones around it, the same being the Southwest corner of said Big Johnny Mine. Thence Fifth Course South 51 degrees, 30 minutes East three hundred feet to place of beginning. Said mine being designated and platted by the Surveyor General of the Territory of Arizona and extending fifteen hundred feet in length along
4 said O'Dougherty vein and containing twenty-five and 45-100 acres of land.

That certain patented mine known as the "Big Johnny" Mine situate in said Globe Mining District and bounded and described as follows: Beginning at a pine post three inches square marked B. J. No 1, a monument of stones around it, being at rock edge of open cut and shaft at bottom of same. Thence first Course South 51 degrees, 30 minutes East three hundred feet to Northeast corner of the claim, a cedar post three inches square marked B. J. No. 2, a monument of stones around it, the same being the Southeast corner of Lot No. 57 the O'Dougherty lode claim from which the United States Mineral Monument No. Two Globe Mining District bears South 10 degrees, 40 minutes West four thousand and ninety-five feet distant. Face of Tunnel No. 2 bears South 89 degrees, 49 minutes West four hundred and ninety feet distant. Cut No. 2 bears South 78 degrees, 50 minutes West six hundred and thirty feet distant. Cut No. 3 bears South 77 degrees, 35 minutes West six hundred and thirty five feet distant and Shaft No. 2 bears South 73 degrees, 5 minutes
5 West seven hundred and forty-five feet distant. Thence Second Course South 49 degrees, 50 minutes West fifteen hundred feet to Southeast corner of the claim, a pine post three inches square marked B. J. No. 3, a monument of stones around it, from which the United States Mineral Monument No. 2 Globe Mining District bears South 18 degrees, 35 minutes East three thousand two hundred and ninety feet distant. Thence Third Course North 51 degrees, 30 minutes West three hundred feet to a pine post three inches square marked B. J. No. 4, a monument of stones around it, six hundred feet to Southwest corner of the claim a pine post three inches square marked B. J. No. 5, a monument of stones around it Thence Fourth Course North 49 degrees, 15 minutes East fifteen hun-

dred feet to Northwest corner of the claim, a cedar post four inches square marked B. J. No. 6 a monument of stones around it, the same being the Southwest corner of said Lot 57. Thence Fifth Course South 51 degrees, 30 minutes East three hundred feet to place of beginning. Said mine being designated and platted by the Surveyor General of the Territory of Arizona as Lot No. 58 extending
6 fifteen hundred feet along the said Big Johnny vein or lode and containing twenty and 30-100 acres of land.

That said plaintiff claims title in fee to the said premises and said defendant claims an estate or interest therein adverse to said plaintiff.

That said claim of said defendant is without any right whatever and that the said defendant has not any right estate title or interest whatever in or to said premises or any part thereof.

Wherefore plaintiff prays that the defendant may be required to set forth the nature of his claim and that all adverse claims of the defendant may be determined by a decree of this Court. That by said decree it be decreed and adjudged that the defendant has no estate or interest whatever in or to said land and premises and that the title of plaintiff is good and valid.

That the defendant be forever enjoined and debarred from asserting any claim whatever in or to said land and premises adverse to the plaintiff and for such other and further relief as to the
7 Court may seem meet the premises considered and for costs of suit.

JOSEPH CAMPBELL,
Attorney for Plaintiff.

TERRITORY OF ARIZONA,
County of Gila, ss.

Joseph Campbell being duly sworn says that he is the attorney for plaintiff and makes this affidavit in his behalf. That he has read the foregoing complaint and knows the contents thereof. That the same is true of his own knowledge except as to those matters therein stated on information and belief and as to those matters he believes it to be true.

JOSEPH CAMPBELL.

Subscribed and sworn to before me this 8th day of June, 1905.

[SEAL.] GEORGE H. SMALLEY,
Clerk District Court.

8 *Answer to Amended Complaint.*

(Title of Court and Cause.)

Comes now the defendant, The United Globe Mines, a corporation, and answers the amended complaint in the above entitled action as follows:

1. Defendant alleges that it is a corporation duly organized and existing under and by virtue of the laws of the State of New York,

and having its principal place of business near the town of Globe, in Gila County, Arizona Territory.

2. Defendant denies that plaintiff is the owner of the premises described in said complaint, or any part thereof.

3. Defendant alleges that it is the owner of and in the possession of and entitled to the possession of those certain patented mines known as the O'Dougherty Mine and the Big Johnny Mine, situated in the Globe Mining District, in said County and Territory, and being the premises described in said complaint; that defendant for more than five years before the commencement of this action, has been in the actual, continuous, uninterrupted, peaceable, ex-
9 clusive, open, notorious, hostile and adverse possession of said premises, and has been cultivating, using, enjoying and working the same, paying taxes thereon, and holding and claiming the same and the title thereto adversely to plaintiff and all the world under a deed from William E. Dodge and D. Willis James conveying said premises to this defendant, which deed is dated January 31st, A. D., 1893, and which said deed was duly recorded on the 17th day of February, A. D., 1893, in the office of the County Recorder of Gila County, said Territory, in Book 3 Deeds of Mines, at page 299.

4. And defendant alleges that the cause of action, if any, stated in the complaint herein, did not accrue within five years next before the commencement of this action.

II.

For a second and separate defense to said amended complaint

1. Defendant denies that plaintiff is the owner of the premises described in said complaint, or any part thereof.

2. Defendant alleges that it and its grantors and predecessors in interest have been in the actual, continuous, uninterrupted,
10 peaceable, exclusive, open, notorious, hostile, and adverse possession of said premises, cultivating, using, enjoying and working the same, and holding and claiming the same adversely to plaintiff and to all the world, for more than ten years before the commencement of this action; and defendant alleges that the cause of action, if any, stated in the complaint herein did not accrue within ten years next before the commencement of this action.

Wherefore, defendant prays that it be adjudged and decreed to be the owner of and entitled to the possession of said O'Dougherty and Big Johnny Mines, and for such other or further relief as may be just and equitable in the premises, and for the costs of this action.

HERRING & SORIN,
Attorneys for Defendant.

TERRITORY OF ARIZONA,
County of Gila, ss:

Niles S. Berray, being first duly sworn, on oath says that he
11 has read the foregoing answer to Amended Complaint and knows the contents thereof; that the allegations of the said Answer are true in substance and in fact; that affiant is the Superintendent and duly appointed Resident Agent of said defendant. The

United Globe Mines, a corporation and makes this affidavit for and in behalf of said defendant.

NILES S. BERRAY.

Subscribed and sworn to before me this 1st day of July, A. D., 1905.

My commission expires June 4th, 1906.

W. D. FISH.
Notary Public, Gila County, Arizona.

Filed July 12, 1905.

12 *Judgment.*

(Title of Court and Cause.)

The parties in the above entitled cause having submitted the matter in controversy between them to the Court upon an Agreed Statements of Facts made out and signed by their respective counsel, and filed with the clerk, and argument having been submitted thereon by briefs by the respective counsel, and the statement agreed upon by counsel and duly signed by them, respectively, having been certified by the Court to be correct, and the Court being fully advised in the premises and having fully considered the same, it is ordered, adjudged and decreed that the defendant, The United Globe Mines, have judgment against the plaintiff, James H. Work, upon the issues in said cause; therefore, by reason of the law and the facts in said cause, it is ordered, adjudged and decreed that the defendant, The United Globe Mines, is the owner of, and entitled to the possession of, the O'Dougherty and Big Jonny mines, the premises referred to in the complaint, described in the Agreed Statement of Facts
13 herein filed, and hereinafter described, and every part and parcel thereof;

And the title of said defendant to said premises is hereby adjudged to be quieted against all claims, demands or pretensions of said plaintiff, who is hereby barred and forever estopped from having or claiming any right, title or interest to said premises, or any part thereof, adverse to said defendant;

Said premises are described as follows, to-wit

The O'Dougherty Mine, situate in the Globe Mining District, Gila County, Arizona, for which a United States patent (General Land Office No. 9966, Mineral Certificate No. 248) was duly issued January 24, 1885, said patent being of record in the General Land Office in Vol. 121, pages 89 to 92 inclusive, and also of record in the office of the Recorder of said Gila County in Book 2, Mining Deeds, page 138; said O'Dougherty mine is more particularly bounded and described as follows, with magnetic variation 13 degrees, 30 minutes East, to-wit:

Beginning at a pine post three inches square marked "O. D. No. I" a monument of stones around it, being on rock at edge
14 of open cut and shaft at bottom of same; thence, first course along northeast boundary of the Big Johnny Lode Claim,

south 51 degrees, 30 minutes East 300 feet to the southeast corner of the claim, a cedar post three inches square marked "O. D. No. II," a monument of stones around it, the same being the northeast corner of said Big Johnny lode claim, from which U. S. mineral monument No. 2 Globe Mining District, bears South 1 degree, 40 minutes west 4095 feet distant; thence, second course, north 31 degrees, 30 minutes east 1500 feet to the northeast corner of the claim, a cedar post three inches square, marked "O. D. No. III," a monument of stones around it, the same being the southeast corner of the Kennedy mining claim; thence, third course, north 51 degrees, 30 minutes west 300 feet to a cedar post four inches square marked "O. D. No. IV," a monument of stones around it, 600 feet to the northwest corner of the claim, a cedar post four inches square, marked "O. D. N. V.", a monument of stones around it, the same being the southwest corner of said Kennedy mining claim; thence, fourth
15 course, south 31 degrees, 30 minutes west 1500 feet to the southwest corner of the claim, a cedar post four inches square, marked "O. D. No. VI," a monument of stones around it, the same being the northwest corner of said Big Johnny Lode claim; thence, fifth course, south 51 degrees, 30 minutes east 300 feet to the place of beginning. Said mine is designated in said patent as Lot No. 57 and extends 1500 feet in length along said vein, and contains twenty and forty-five hundredths acres of land, more or less;

And also the Big Johnny Mine, for which United States Patent (General Land Office No. 9965, Mineral Certificate No. 247) was duly issued January 24, 1885, said patent being of record in the General Land Office in Vol. 121, pages 85 to 88, inclusive, and also of record in the office of the recorder of said Gila County in Book 2, Mining Deeds, page 442;

Said Big Johnny mine is more particularly bounded and described as follows, with Magnetic variation 13 degrees, 30 minues east to-wit:

Beginning at a pine post three inches square marked "B. J. No. I," a monument of stones around it, being on rock at edge
16 of open cut and shaft at bottom of same; thence, first course, south 51 degrees, 30 minutes east 300 feet to the northeast corner of the claim, a cedar post three inches square, marked "B. J. No. II," a monument of stones around it, the same being the southeast corner of Lot No. 57, the O'Dougherty lode claim, from which U. S. Mineral Monument No. 2, Globe Mining District, bears south 1 degree, 40 minutes west 4095 feet distant; thence, second course, south 49 degrees, 15 minutes west 1500 feet to the southeast corner of the claim, a pine post three inches square, marked "B. J. No. III," a monument of stones around it, from which said U. S. Mineral Monument bears south 18 degrees, 35 minutes east 3290 feet distant; thence third course, north 51 degrees, 10 minutes west 300 feet to a pine post three inches square, marked "B. J. No. IV," a monument of stones around it, 600 feet to the southwest corner of the claim, a pine post three inches square marked "B. J. No. V," a monument of stones around it; thence, fourth course, north 49 degrees, 15 minutes east 1500 feet to the northwest corner of the claim, a cedar post four

inches square, marked "B. J. No. VI." a monument of stones
17 around it, the same being the southwest corner of said lot No 57; thence, fifth course, south 51 degrees, 30 minutes east 300 feet to the place of beginning. Said mine is designated in said patent as Lot No. 58, and extends 1500 feet in length along said Big Johnny vein, and contains Twenty acres and thirty-hundreths of an acre of land;

And it is further ordered, adjudged and decreed that defendant have and recover of and from the plaintiff its costs of this action, amounting to $5.15.

Dated February 26, A. D. 1906.

FREDERICK S. NAVE, *Judge.*

18 *Motion to Vacate Judgment.*

(Title of Court and Cause.)

Comes now George J. Stoneman, attorney for plaintiff above named, herein appearing specially at the request of plaintiff, on account of the death of Joseph Campbell, the attorney of record, and moves that the judgment handed down by this Court on the 3rd day of February, 1906, and duly recorded on the 14th day of February, 1906, be vacated and set aside.

This motion is based upon the affidavit of George J. Stoneman, herewith attached and made a part hereof.

GEORGE J. STONEMAN,
Attorney for Plaintiff.

19 *Affidavit.*

(Title of Court and Cause.)

George J. Stoneman, being first duly sworn, deposes and says that on the 3rd day of February, 1906, in the absence of Joseph Campbell, attorney of record for James H. Work of New York City, plaintiff in the case of James H. Work vs. The United Globe Mines, a corporation, in the District Court of the Fifth Judicial District of the Territory of Arizona in and for Gila County, judgment was by the Court rendered for defendant in said case; that thereafter, on the 14th day of February, 1906, in accordance with said judgment so rendered, judgment, as directed by the Court, was filed by defendant with the clerk of said Court; that on the 15th day of February, 1906, Charles T. Martin, Clerk of said Court, directed a letter to James H. Work at New York City, notifying him of the recording of said judgment; that on the 20th day of February, 1906, immediately after the receipt by the said James H. Work at New York City of said notification, the said James H. Work replied to the said Charles T. Martin, in said reply stating that he
20 had taken immediate steps to preserve his rights on appeal to the Supreme Court of the Territory of Arizona in said

case from the judgment so rendered, the original of said letter from the said James H. Work to the said Charles T. Martin being herewith attached and made a part of this affidavit; that on the said 20th day of February, 1906, the said James H. Work notified deponent by telegram to take such steps as might be necessary to preserve the right on appeal of the said James H. Work from the judgment so rendered and recorded, the original of the telegram to this effect being herewith attached and made a part of this affidavit; that said telegram was received by deponent on the morning of the 21st day of February, 1906, and that on said date deponent filed with the clerk of said Court a motion for a new trial in said case. Deponent is informed, and verily believes the truth to be, that at the time said judgment was rendered, on the 3rd day of February, 1906, Joseph Campbell, the attorney of record for plaintiff James H. Work, was dead or dying in the City of Los Angeles, State of California, and that for a long time prior to said 3rd day
21 of February, 1906, the said Joseph Campbell was totally unable to transact any business whatever or to give his attention to the case of James H. Work vs. The United Globe Mines, A Corporation, wherein judgment was rendered for defendant on said 3rd day of February, 1906.

Upon the facts hereinabove set forth, deponent avers that *that* said James H. Work has used the utmost diligence which, under the circumstances, it was possible for him to use, in order to make and file in said District Court his motion for a new trial of the case of James H. Work vs. The United Globe Mines, A Corporation, but that, notwithstanding such diligence, he was unable to file said motion within the five days allowed him by law to file Statement of Facts submitted to the Court by the same, or until the 21st day of Febr*uary*, 1906, when said motion was so filed by deponent at the request of said James H. Work; that this judgment was rendered upon *and* Agreed — counsel for both plaintiff and defendant, and that the motion filed herein to vacate the judgment in said case rendered, in support of which this affidavit is made, is filed
22 for the purpose only of allowing said judgment to be again made by the Court and again filed, without any change whatever, so that plaintiff James H. Work, may make and file a motion for a new trial within the statutory time of five days from the rendition of such judgment, and is not made for the purpose of prejudicing the rights of defendant, The United Globe Mines, a corporation, in any manner or for the purpose of changing the legal status of said The United Globe Mines, A Corporation, from that had by it on the 14th day of February, 1906, except in so far as such legal status might be changed by allowing the motion for a new trial to be filed within the statutory time of five days and to prevent any complications from arising upon the question as to whether or not a motion for a new trial is necessary after the rendition of a judgment upon an Agreed Statement of Facts; that the motion to vacate the judgment, in support of which this affidavit is made, is directed at the sound discretion of the Court, to take such action therein

as shall best subserve the demands of justice, in consideration
23 of all the facts in this case.

GEORGE J. STONEMAN.

Subscribed and sworn to before me, this 26th day of February, A. D. 1906.

[SEAL DISTRICT COURT.] CHAS. T. MARTIN.
Clerk of the District Court of the Fifth Judicial District of the Territory of Arizona in and for the County of Gila.

American Exchange Bank Building, 128 Broadway.

NEW YORK, *February* 20, 1906.

J. Henry Work, Attorney and Counsellor at Law.

DEAR SIR: A few minutes since I received your memorandum dated February 15th advising me that the District Court had decided against me in my action against the United Globe Mines and advising me that I must take some appeal—I do not of course
24 understand the exact legal situation—and do not of course know myself what should be done—and Judge Campbell's death is a surprise and misfortune. I have telegraphed to Mr. Geo. J. Stoneman to do what may be necessary to preserve my right to appeal. If for any reason my message miscarries, will you please see that some attorney makes such formal motion as is necessary, and if necessary file and serve a notice of appeal.

I wish to see the record and examine the Court's opinion as soon as my attorney can get the material for me.

Very truly yours,

J. H. WORK

30 O M. G.—15 paid—8-10 p.—

Received at NEW YORK, *Feb.* 20, 1906.

George L. Stoneman, Globe.

See Martin Clerk District Court. Take necessary steps to preserve right to appeal. Answer paid.

J. H. WORK.

25 (Title of Court and Cause.)

Motion for a New Trial.

Comes now the plaintiff above-named, by George J. Stoneman, herein appearing specially at the request of plaintiff in lieu of Joseph Campbell, Esquire, deceased, attorney of record for plaintiff, for the purpose of filing this motion for New Trial, and moves that the judgment of the Court for defendant, rendered in the above entitled case, be set aside and a new trial granted.

This motion is based upon the following grounds, to-wit:
That the judgment in said case is not supported by the evidence; that the Court erred in applying the law in the case to the facts therein as presented to the Court under an agreed statement of facts.

GEORGE J. STONEMAN,
Attorney for Plaintiff.

Endorsed: "Filed at 4:45 o'clock p. m. February 21st. 1903. Chas. T. Martin, Clerk."
Endorsed: "Filed February 26, 1906. Chas. T. Martin, Clerk."

26 In the District Court of the Third Judicial District of the Territory of Arizona, in and for the County of Gila. Regular June Term.

MONDAY, *June 6th*, 1904.

Present:

Hon. Edward Kent, Judge;
Geo. R. Hill, Esq., District Attorney;
C. R. Rogers, Sheriff;
W. N. Tiffany, Reporter, and
Chas. T. Martin, Clerk.

JAMES H. WORK, Plaintiff,
vs.
THE UNITED GLOBE MINES, Defendant.

This cause was by consent continued for the term.

EDWARD KENT, *Judge.*

27 In the District Court of the Third Judicial District of the Territory of Arizona in and for the County of Gila. Regular December Term.

MONDAY, *December 5th*, 1904.

Present:

Chas. T. Martin, Court Commissioner;
Geo. R. Hill, Esq., District Attorney, and
C. R. Rogers, Sheriff.

The following order was then filed and recorded, viz.

"In the District Court of the Third Judicial District of the Territory of Arizona, in and for the County of Gila.

Order.

The Judge of this Court, and of the Third Judicial District having requested Hon. Geo. R. Davis, Judge of the First Judicial District of this Territory, to hold the regular December (1904)
28 Term of the District Court of Gila County, and received his consent so to do;

It is now, Therefore Ordered, That the said Hon. Geo. R. Davis be, and he is hereby, appointed to preside over and hold said December (1904) Term of the District Court of the Third Judicial District of the Territory of Arizona, in and for the County of Gila.

EDWARD KENT,
Judge of the District Court of the Third Judicial District of the Territory of Arizona in and for the County of Gila."

The regular December Term 1904, of the District Court of the Third Judicial District of the Territory of Arizona, in and for the County of Gila was then, in pursuance of telegraphic instructions, duly opened, and thereupon adjourned to Tuesday, December 6th, 1904, at 9 o'clock, a. m.

CHAS. T. MARTIN,
Court Commissioner of the District Court in and for Gila County, Arizona.

29 In the District Court of the Third Judicial District of the Territory of Arizona, in and for the County of Gila, Regular December Term.

TUESDAY, *December 6th*, 1904.

Court convened at 9 o'clock A. M.

Present:

Hon. Geo. R. Davis, Judge;
Geo. R. Hill, Esq., District Attorney;
C. R. Rogers, Sheriff;
Chas. T. Martin, Clerk, and
W. F. Cooper, Deputy Reporter.

JAMES H. WORK, Plaintiff,
vs.
THE UNITED GLOBE MINES, Defendant.

On motion, and by agreement of counsel for the respective parties, it is by the Court ordered that the trial of this cause be postponed to the May, 1905, session of the present term.

GEO. R. DAVIS, *Judge.*

30 In the District Court of the Third Judicial District of the Territory of Arizona, in and for the County of Gila, Regular December Term.

MONDAY, *June 5th*, 1905.

Present

Hon. Eugene A. Tucker, Judge;
A. R. Edwards, Esq., District Attorney;
E. P. Shanley, Sheriff;
W. W. Weed, Court Reporter, and
Geo. H. Smalley, Clerk.

JAMES H. WORK, Plaintiff,
vs.
THE UNITED GLOBE MINES, Defendant.

By consent of the respective counsel it is by the Court ordered that this cause be and the same is set for trial June 26, 1905, at 9 o'clock a. m.

31 THURSDAY, *June 8th*, 1905.

JAMES H. WORK, Plaintiff,
vs.
THE UNITED GLOBE MINES, Defendant.

It is hereby ordered that the order setting this case for trial is revoked, and the clerk is directed to notify counsel on both sides at such time as the case is set for trial.

MONDAY, *September* 18, 1905.

JAMES H. WORK, Plaintiff,
vs.
THE UNITED GLOBE MINES, Defendant.

It is by the Court ordered that this cause be and the same is hereby continued for the term.

EUGENE A. TUCKER, *Judge*.

32 In the District Court of the Third Judicial District of the Territory of Arizona, in and for the County of Gila, Regular December Term.

MONDAY, *November* 27, 1905.

Present

Hon. Frederick S. Nave, Judge;
A. R. Edwards, Esq., District Attorney;
E. P. Shanley, Sheriff;
George H. Smalley, Clerk, and
W. W. Weed, Reporter.

JAMES H. WORK, Plaintiff,
vs.
THE UNITED GLOBE MINES, Defendant.

It is by the Court ordered that this case be and the same is submitted on the statement of facts filed herein and agreed to by both parties hereto.

33 THURSDAY, *December 21st*, 1905.

JAMES H. WORK, Plaintiff,
vs.
THE UNITED GLOBE MINES, Defendant.

It is ordered that the order heretofore made submitting this case on briefs filed herein is vacated; and it is ordered that this case be restored to the calendar for further argument.

SATURDAY *February 3rd*, 1906.

JAMES H. WORK, Plaintiff,
vs.
THE UNITED GLOBE MINES, Defendant.

This cause having been heretofore submitted to the Court on an agreed statement of facts, and duly considered, and the Court being now fully advised in the premises, now finds for the defendant, The United Globe Mines, and against the plaintiff, James H. Work, and orders that judgment be entered accordingly.

34 MONDAY, *February 26th*, 1906.

JAMES H. WORK, Plaintiff,
vs.
THE UNITED GLOBE MINES, Defendant.

Comes now George J. Stoneman, Esq., attorney for plaintiff and files motion to vacate the judgment heretofore entered herein—said motion is submitted to the Court—whereupon it is by the Court ordered that the motion be granted vacating the judgment and the order for judgment entered on February 3rd, 1906, for the purpose of permitting plaintiff to file his motion for a new trial.

It is now by the Court ordered that judgment be entered in favor of The United Globe Mines, defendant herein, and against James H. Work, plaintiff; and it is further ordered that the judgment heretofore filed herein, be again filed as of this date, which is done.

On application of the Attorney for plaintiff, it is ordered that plaintiff be permitted to withdraw his motion for a new trial filed February 21st, 1906, and that said motion for a new trial be re-filed this day, which is done.

35 The motion for a new trial is then submitted to the Court without argument, whereupon the motion is by the Court

overruled, to which ruling of the Court plaintiff excepts, and now gives notice in open Court of appeal to the Supreme Court of the Territory of Arizona from the judgment herein and from the order overruling the motion for a new trial.

On application of George J. Stoneman, Esq., Attorney for plaintiff, it is by the Court ordered that plaintiff have sixty days from the date hereof to perfect the record on appeal.

No further business appearing for the disposition of the Court, it is now ordered that the District Court of the Fifth Judicial District of the Territory of Arizona, in and for the County of Gila, do now stand adjourned sine die.

FREDERICK S. NAVE, *Judge.*

TERRITORY OF ARIZONA,
County of Gila, ss:

36 I, Chas. T. Martin, Clerk of the District Court of the Fifth Judicial District of the Territory of Arizona, in and for the County of Gila, do hereby certify that I have compared the foregoing copy of the minute entries made and entered on the minutes of said Court in the trial of that certain civil action entitled "James H. Work, plaintiff, vs. The United Globe Mines, defendant" and of the endorsement thereupon, with the original records of the same remaining in this office, and that the same are correct transcripts therefrom, and of the whole of said original records.

Witness my hand and seal of said Court affixed, this 8th day of September, A. D. 1906.

[SEAL.] ——— ———, *Clerk.*

36a (Title of Court and Cause.)

To the Clerk of the above named District Court:

Comes now James H. Work, the plaintiff in the above entitled cause, and hereby petitions you for a Writ of Error, as he desires to remove said cause to the Supreme Court of the Territory of Arizona for revision and correction.

That the names and residences of the parties adversely interested are as follows:

James H. Work, plaintiff, residing at the city of New York, State of New York.

The United Globe Mines Company, a corporation, organized and existing under and by virtue of the Laws of the State of New York, having its principal place of business near the Town of Globe, in Gila County, Arizona Territory, defendant.

That heretofore, on the 26th day of February, 1906, judgment in said cause was rendered by this Court in favor of the defend-
36b ant, and against this plaintiff; and plaintiff's motion for new trial therein overruled by this Court, by which said judgment and order, plaintiff was grieved, in that in said judgment and order overruling plaintiff's motion for a new trial, and the proceedings had prior thereunto in this cause, certain errors were committed to the

prejudice of this plaintiff, which said judgement and order over ruling plaintiff's motion for a new trial, are in the following words and figures, to-wit:

36 *Judgment.*

(Title of Court and Cause.)

The parties in the above entitled cause having submitted the matter in controversy between them to the Court upon an agreed statements of Facts made out and signed by their respective counsel, and filed with the clerk, and argument having been submitted thereon by briefs by the respective counsel, and the statement agreed upon by counsel and duly signed by them, respectively, having been certified by the Court to be correct, and the Court being fully advised in the premises and having fully considered the same, it is ordered, adjudged and decreed that the defendant, The United Globe Mines, have judgment against the plaintiff, James H. Work, upon the issues in said cause; therefore, by reason of the law and the facts in said cause, it is ordered, adjudged and decreed that the defendant, The United Globe Mines, is the owner of, and entitled to the possession of, the O'Dougherty and Big Johnny mines, the prem-
36*d* ises referred to in the complaint, described in the Agreed Statement of Facts herein filed, and hereinafter described, and every part and parcel thereof:

And the title of said defendant to said premises is hereby adjudged to be quieted against all claims, demands or pretensions of said plaintiff, who is hereby barred and forever stopped from having or claiming any right, title or interest to said premises, or any part thereof, adverse to said defendant:

Said premises are described as follows, to-wit:

The O'Dougherty Mine, situate in the Globe Mining District, Gila County, Arizona, for which a United States patent (General Land Office No. 9966, Mineral Certificate No. 248) was duly issued January 24, 1885, said patent being of record in the General Land Office in Vol. 121, pages 89 to 92 inclusive, and also of record in the office of the Recorder of said Gila County in Book 2, Mining Deeds, page 138; said Dougherty mine is more particularly bounded and described as follows, with magnetic variation 13 degrees, 30 minutes East, to-wit:

36*e* Beginning at a pine post three inches square marked "O. D. No. 1" a monument of stones around it, being on rock at edge of open cut and shaft at bottom of same; thence, first course, along northeast boundary of the Big Johnny Lode Claim, south 51 degrees, 30 minutes East, 300 feet to the southeast corner of the claim, a cedar post three inches square marked "O. D. No. 11" a monument of stones around it, the same being the northeast corner of said Big Johnny lode claim, from which U. S. mineral monument No. 2 Globe Mining District, bears South 1 degree, 40 minutes West 1095 feet distant; thence, second course, north 31 degrees, 30 minutes east 1500 feet to the northeast corner of the claim, a cedar post

three inches square, marked "O. D. No. III," a monument of stones around it, the same being the southeast corner of the Kennedy mining claim; thence, third course, north 51 degrees, 30 minutes west 300 feet to a cedar post four inches square, marked "O. D. No. IV," a monument of stones around it, 600 feet to the north-west corner of the claim, a cedar post four inches square, marked "O. D.
36f No. V", a monument of stones around it, the same being the southwest corner of said Kennedy mining claim; thence, fourth course, south 31 degrees, 30 minutes west 1800 feet to the southwest corner of the claim, a cedar post four inches square, marked "O. D. No. VI," a monument of stone around it the same being the northwest corner of said Big Johnny Lode Claim; thence, fifth course, south 51 degrees, 30 minutes east 300 feet to the place of beginning. Said mine is designated in said patent as Lot No. 57 and extends 1500 feet in length along said vein, and contains twenty and forty-five hundredths acres of land, more or *or* less;

And also the Big Johnny Mine, for which United States Patent (General Land Office No. 9965, Mineral Certificate No. 247) was duly issued January 24, 1885, said patent being of record in the General Land Office in Vol. 121, pages 85 to 88, inclusive, and also of record in the office of the Recorder of said Gila county in Book 2, Mining Deeds, page 442.

36g Said Big Johnny mine is more particularly bounded and described as follows, with magnetic variation 13 degrees, 30 minutes east to-wit:

Beginning at a pine post three inches square marked "B. J. No. I", a monument of stones around it, being on rock at edge of open cut and shaft at bottom of same; thence, first course, south 51 degrees, 30 minutes east, 300 feet to the northeast corner of the claim, a cedar post three inches square, marked "B. J. No. II" a monument of stones around it, the same being the southeast corner of Lot No. 57 the O'Dougherty Lode claim, from which U. S. Mineral monument No. 2, Globe Mining District bears south 1 degree, 40 minutes west 4095 feet distant; thence, second course, 49 degrees, 15 minutes west 1500 feet to the southeast corner of the claim, a pine post three inches square, marked "B. J. No. III", a monument of stones around it, from which said U. S. Mineral Monument bears south 18 degrees, 35 minutes east 3290 feet distant; thence third course, north 51 degrees, 10 minutes west 300 feet to a pine
36h post three inches square, marked "B. J. No. IV," a monument of stones around it, 600 feet to the southwest corner of the claim, a pine post three inches square, marked "B. J. No. V," a monument of stones around it, thence, fourth course, north 49 degrees 15 minutes east 1,500 feet to the northwest corner of the claim, a cedar post four inches square, marked "B. J. No. VI," a monument of stones around it, the same being the southwest corner of said Lot No. 57; thence fifth course, south 51 degrees, 30 minutes east 300 feet to the place of beginning. Said mine is designated in said patent as Lot No. 58, and extends 1500 feet in length along said Big Johnny vein, and contains twenty acres and thirty-hundredths of an acre of land;

And it is further ordered, adjudged and decreed that defendant have and recover of and from the plaintiff its costs of this action, amounting to $5.15.

Dated February 26, A. D. 1906.

FREDERICK S. NAVE, *Judge*.

35 MONDAY, *February 26th*, 1906.

JAMES H. WORK, Plaintiff,
vs.
THE UNITED GLOBE MINES, Defendant.

Comes now George J. Stoneman, Esq., attorney for plaintiff and files motion to vacate the judgment heretofore entered herein, said motion is submitted to the Court, whereupon it is by the Court ordered that the motion be granted vacating the judgment and the order for judgment entered on February 3rd, 1906, for the purpose of permitting plaintiff to file his motion for a new trial.

It is now by the Court ordered that judgment be entered in favor of The United Globe Mines, defendants herein, and against James H. Work, plaintiff, and it is further ordered that the judgment heretofore filed herein, be again filed as of this date, which is done.

On application of the Attorney for plaintiff, it is ordered that plaintiff be permitted to withdraw his motion for a new trial filed February 24-t, 1906, and that said motion for a new trial be refiled this day, which is done.

36 The motion for a new trial is then submitted to the Court without argument, whereupon the motion is by the Court overruled, to which ruling of the Court plaintiff excepts, and now gives notice in open Court of appeal to the Supreme Court of the Territory of Arizona from the judgment herein and from the order overruling the motion for a new trial.

That the foregoing described judgment and order is the judgment and order complained of by plaintiff, and is the judgment and order which plaintiff seeks to have revised and corrected by the Supreme Court of the Territory of Arizona.

Wherefore, plaintiff prays that a Writ of Error may issue to the Supreme Court of the Territory of Arizona, for a correction of the errors complained of, and that a duly certified transcript of the record, proceedings and papers herein, may be sent to the said Supreme Court of the Territory of Arizona.

Dated February 12th, A. D., 1907.

Respectfully submitted,

JAMES H. WORK, *Plaintiff*.
By FRANCIS M. HARTMAN,
His Attorney.

"Filed February 15th, 1907.
GEO. H. SMALLEY, *Clerk*.

37 (Title of Court and Cause.)

Agreed Case.

The undersigned, attorneys for the respective parties to the above entitled action, hereby stipulate and agree that the papers and instruments hereto attached constitute the Agreed Statement of Facts in said cause upon which the matter in controversy between the parties in said case is by said parties submitted to the Court for its determination and judgment, as provided by Paragraph 1391 of Revised Statutes of Arizona (1901).

(Signed) JOSEPH CAMPBELL,
Attorney for Plaintiff.
HERRING & SORIN,
Attorneys for Defendant.

In compliance with the provisions of paragraph 1391 of the Revised Statutes, I certify this statement to be correct.

(Signed) FREDERICK S. NAVE, *Judge.*

Dated February 3, 1906.

38 (Title of Court and Cause.)

Facts Summitted on Behalf of Plaintiff for Proposed Agreed Case.

1.

That on the 24th day of November, 1882, Samuel B. Benn, owner of the O'Dougherty and Big Johnny Mining claims, being the property described in plaintiff's complaint, made executed and delivered to Tacoma Copper Company, a corporation, a mining deed for said property which said deed was duly recorded December 23rd 1882, in Book 2 Deeds to Mines page 1 in the office of the County Recorder of Gila County.

2.

That on the 23rd day of November, 1882, said Samuel B. Benn made, executed and delivered to the plaintiff, then and at all times hereafter mentioned a resident of the City of New York, State of New York, a mortgage upon said O'Dougherty and Big
39 Johnny mines, as security for the payment of $25,000, within ninety days, which said mortgage was duly recorded on the 5th day of December, 1882, Book 1 of Real Estate Mortgages, page 206, in the office of the County Recorder of said Gila County, Arizona.

3.

That on the 10th day of February, 1884, an action was brought in the District Court of the Second Judicial District of Arizona in and for Gila County by James H. Work, the plaintiff herein against Tacoma Copper Company to foreclose the aforesaid mortgage, alleg-

ing in said complaint among other things that after the making and recording said mortgage said Samuel Benn conveyed the mortgaged property to the Tacoma Copper Company. That on the 26th day of September 1884, a judgment and decree of foreclosure and sale of said property described in said mortgage was duly given, made and rendered in said Court and thereafter an order of sale was duly issued and delivered to the Sheriff of Gila County for service and was duly executed by him according to law.

40

4.

That on the 24th day of January, 1885, a patent was duly issued by the United States to Tacoma Copper Company for said Big Johnny mines which was duly recorded in Book 2 Records of Deeds to Mines, pages 442, in the office of the County Recorder of Gila County.

5.

That on the 4th day of January, 1885, a patent was duly issued and delivered by the United States to Tacoma Copper Company for the said O'Dougherty mine which said patent was duly recorded in Book 2, Records of Deeds to Mines page 338 in the office of the County Recorder of Gila County, Arizona.

6.

That on the 10th day of February, 1886, B. F. Pascoe, Sheriff of Gila County, Arizona, duly made and executed and delivered to said James H. Work a sheriff's deed in due form of law conveying to him the said Big Johnny and O'Dougherty mines which said deed recites the fact of the rendition of the aforesaid decree of foreclosure, the reception by said Sheriff of a certified copy thereof and of
41 an order of sale, and that on the 29th day of December, 1884, he duly sold according to law at public auction said two mining claims to said James H. Work plaintiff herein and duly delivered to him a certificate of sale and caused one to be filed and recorded in the office of the County Recorder of said County and that more than six months have elapsed since the date of said sale and no redemption has been made and that therefore said sheriff's deeds was executed conveying to said James H. Work said O'Dougherty and Big Johnny mines, which said deed was duly recorded on the 10th day of February, 1886, in Book 2 Deeds to Mines, page 448 in the office of the County Recorder of Gila County, Arizona. The judgment roll in the action referred to in said deed is hereby made a part hereof.

7.

That said James H. Work has never conveyed his interest in said O'Dougherty and Big Johnny mines to any one whomsoever.

8.

That on the 15th day of December, 1890, the Board of Supervisors of Gila County, Arizona, made, executed and delivered
42 to D. W. James and W. E. Dodge of New York City, New York, a deed for said O'Dougherty and Big Johnny mines

which said deed recites among other things the following: "Witnesseth that whereas B. F. Pascoe, Sheriff and Ex-Officio Tax Collector of said County did by virtue of the provisions of an Act of the Legislature of Arizona entitled 'An Act Amendatory to Chapter 33 of Compiled Laws of Arizona Territory to provide revenue for the Territory of Arizona and the several Counties thereof' Approved April 12, 1875, Approved March 10, 1881, as such Tax Collector heretofore and at the time hereinafter mentioned, to-wit, on the third Monday of December 1883 at the close of his official business on that day, entered upon the Duplicate Assessment Roll a statement that he had made a levy upon all property therein assessed, the taxes upon which had not been paid and did immediately ascertain the total amount of taxes then delinquent, and filed in the office of the Treasurer of said County a statement of said amount verified by him and did make out a list of all persons and property then owing taxes in said County to the
43 Territory of Arizona and to the County of Gila together with the costs and charges thereon, and which said list was duly verified by him and was completed on the last day of December, 1883, and did include the property first hereinafter described. That said property was assessed for the fiscal year commencing on the first Monday in March 1883 for County and Territorial taxes as follows: "Work Jas. H., Mortgagee on O'Dougherty and Big Johnny Mines Globe Mining District $25,000. Tax $725 00 per cent added $36 25 Fees 45,67 penalty $1,00,$807,92 being liable for $807,92 the amount of taxes and costs due on the said third Monday in December 1883. Was on the 10th day of March 1884 in accordance with law offered for sale to pay said taxes and costs at public auction in front of the Sheriff's office, there being no court house in said County. That on the day said property was first offered for sale at said auction there was no bidder ther-for and at a subsequent day of auction to-wit the 12th day of March 1884, the property was again offered for sale for said taxes and costs, and there being still no bidder or purchaser therefor the same and the whole thereof was by the said B. F.
44 Pascoe, Sheriff and Ex-Officio Tax Collector as aforesaid struck off to the Territory of Arizona as the purchaser pursuant to law' etc., etc., etc.

Now therefore this Indenture Witnesseth That the said Board of Supervisors of said County of Gila has by virtue of the power in them vested by the Statute in such case made and provided, for and in consideration of the sum of $1365 49 lawful money of the United States in hand paid by D. W. James and W. E. Dodge, the receipt whereof is hereby acknowledged, bargained, sold conveyed and confirmed and by these presents does grant bargain sell and convey and confirm unto the said D. W. James and W. E. Dodge, to their heirs and assigns forever, all the right title and interest and claim which the said Territory of Arizona has or ever had in or to all of that lot, piece or parcel of land situate lying and being in the said County of Gila, Territory of Arizona hereinabove described, being the said O'Dougherty and Big Johnny mines.

Which said deed was duly executed and acknowledged by Patrick

Shanley, Chairman and Chas. T. Martin, Clerk of the Board
45 of Supervisors of Gila County and recorded January 2nd, 1891, in Book 3 of Deeds to Mines, page 135 in the office of the County Recorder of Gila County, A. T.

That thereafter on January 31st, 1893 said D. W. James and W. E. Dodge conveyed said property to said defendant as set forth in paragraph 2 of Facts submitted on behalf of defendant.

(Signed) JOSEPH CAMPBELL,
Attorney for Plaintiff.
HERRING & SORIN,
Attorneys for Defendant.

(Title of Court and Cause.)

The following facts in the above Agreed Case are herewith submitted by defendant:

1. That defendant is a corporation duly organized and existing under and by virtue of the laws of the State of New York, and having its principal place of business near the Town of Globe, in the Gila County, Arizona Territory;

That prior to the 31st day of January, 1893, the defendant had performed each and every of the acts required to be performed by the laws of Arizona in order to entitle it to transact busi-
46 ness in the Territory of Arizona, and on said last mentioned date was and ever since has been competent and duly qualified to transact business in this Territory, and to take, receive, acquire, possess, own and hold any and all kinds of property therein, and to sue and be sued;

2. That on January 31, 1893, William E. Dodge and D. Willis James made, executed and delivered to defendant a deed conveying to defendant certain lands and premises situated in the Globe Mining District, Gila County and Territory of Arizona, known and designated as the O'Dougherty and Big Johnny mines, which deed was recorded in the office of the Recorder of said County on the 17th day of February, A. D. 1893, in Book 3, Deeds to Mines, page 299, a certified copy of which deed is hereto attached marked Defendant's Exhibit A.;

3. That a United States Patent for said O'Dougherty mine (being Land Office No. 9966, Mineral Certificate No. 248) was issued to Tacoma Copper Company January 24, 1885; that said patent is of record in the General Land Office in Volume 121 at pages 89 to 92 inclusive, and is also of record in the office of the Re-
47 corder of said Gila County in Book 2, Mining Deeds, page 138;

4. That in said patent said O'Dougherty mine is more particularly bounded and described as follows, with magnetic variation 13 degrees, 30 minutes east, to-wit:

Beginning at a pine post three inches square marked "O. D. No. 1" a monument of stones around it, being on rock at edge of open cut and shaft at bottom of same; thence, first course, along northeast boundary of the Big Johnny lode claim, south 51 degrees, 30

minutes east 300 feet to the Southeast corner of the claim, a cedar post three inches square marked "O. D. No. II" a monument of stones around it, the same being the northeast corner of said Big Johnny lode claim, from which U. S. Mineral monument 2, Globe Mining District, bears S. 1 degree 40 minutes W. 4095 feet distant; thence, second course, N. 31 degrees, 30 minutes E. 1500 feet to the north-east corner of the claim, a cedar post three inches square, marked "O. D. No. III", a monument of stones around it, the same being the southeast corner of the Kennedy mining claim;
48 thence, third course, north 51 degrees 30 minutes W. 300 feet to a cedar post four inches square marked "O. D. No. IV", a monument of stones around it, 600 feet to the northwest corner of the claim, a cedar post four inches square, marked "O. D. N. V.", a monument of stones around it, the same being the southwest corner of said Kennedy mining claim; thence, fourth course, S. 31 degrees, 30 minutes W. 1500 feet to the southwest corner of the claim, a cedar post four inches square, marked "O. D. No. VI", a monument of stones around it, the same being the northwest corner of said Big Johnny lode claim; thence, fifth course, S. 51 degrees, 30 minutes E. 300 feet to the place of beginning. Said mine is designated in said patent as Lot No. 57 and extends 1500 feet in length along said vein, and contains twenty and forty-five hundredths acres of land, more or less.

5. That a United States Patent for said Big Johnny Mine (being General Land Office No. 9965, Mineral Certificate No. 247) was issued to said Tacoma Copper Company January 24, 1885; that said patent is of record in the General Land Office in Volume 121, pages 85 to 88, inclusive, and is also of record in the office of the
49 Recorder of said Gila County in Book 2, Mining Deeds, page 442;

6. That in said last mentioned patent said Big Johnny Mine is more particularly bounded and described as follows, with magnetic variation 13 degrees, 30 minutes East, to-wit:

Beginning at a pine post three inches square marked "B. J. No. I", a monument of stones around it, being on rock at edge of open cut and shaft at bottom of same; thence, first course, S. 51 degrees, 30 minutes E. 300 feet to the northeast corner of the claim, a cedar post three inches square, marked B. J. No. II", a monument of stones around it, the same being the Southeast corner of Lot No. 57, the O'Dougherty lode claim, from which U. S. Mineral Monument No. 2, Globe Mining District, bears S. 1 degree, 40 minutes W. 4095 feet distant; thence, second course, S. 49 degrees, 15 minutes W. 1500 feet to the Southeast corner of the claim, a pine post three inches square, marked "B. J. No. III", a monument of stones around it, from which said U. S. Mineral Monument bears S. 18 degrees, 35 minutes E. 3290 feet distant; thence, third course
50 No. 51 degrees 30 minutes W. 300 feet to a pine post three inches square, marked "B. J. No. IV", a monument of stones around it; 600 feet to the Southwest corner of the claim a pine post three inches square, marked "B. J. No. V", a monument of stones around it; thence fourth course, N. 49 degrees, 15 minutes E. 1500

feet to the Northwest corner of the claim, a cedar post four inches square, marked "B. J. No. VI", a monument of stones around it, the same being the Southwest corner of said lot No. 57; thence, fifth course, S. 51 degrees, 30 minutes E. 300 feet to the place of beginning. Said mine is designated in said patent as Lot No. 58, and extends 1500 feet in length along said Big Johnny vein, and contains twenty acres and thirty-hundredths of an acre of land.

7. That upon the execution and delivery of said — to defendant, James and Dodge, the said grantors of defendant, delivered possession of said premises to defendant and defendant immediately went into possession thereof and put men to work on said mining premises, and began working, mining and developing same; that ever since the date of said deed of January 31st, 1893, and
51 up to and including the time when this action was commenced on November 16, 1903, defendant has been in actual, continuous, uninterrupted, exclusive, open, notorious, hostile and adverse possession of said premises, working, using, developing, cultivating and enjoying the same.

8. That ever since said conveyance to defendant on January 31st, 1893, defendant has been claiming to own the said O'Dougherty and Big Johnny mines and has claimed title thereto under said deed of January 31st, 1893, and during all of said time has claimed and held the said premises adversely to plaintiff and all the world;

9. That in the year 1893 and in each and every year since 1893, defendant has paid the taxes on said mines;

10. That on the 15th day of December, 1890, the Board of Supervisors of the County of Gila, Territory of Arizona, made, executed and delivered to defendant's grantors, said James and Dodge, a deed conveying to said grantors the said O'Dougherty and Big Johnny mines, which deed was recorded in the office of the Recorder of said County in Book 3, Deeds to Mines, at page 135; a certified
52 copy of which deed is hereto annexed marked Defendant's Exhibit B.;

11. That in each of the years 1891 and 1892 said James and Dodge paid taxes on said O'Dougherty and Big Johnny miles;

12. That upon the execution and delivery of said deed of December 15th, 1890, said James and Dodge took possession of said mines and commenced mining thereon, and that from said last mentioned date until they conveyed said premises to defendant and delivered to it the possession thereof on January 31st, 1893, said James and Dodge were in the actual, continuous, uninterrupted, peaceable, exclusive, open, notorious, hostile and adverse possession of said premises, and during all of said time said James and Dodge were developing, cultivating, using, enjoying and working the said mines, and claiming and holding the same under said deed of December 15th, 1890, adversely to plaintiff and to all the world.

(Signed) HERRING & SORIN,
Attorneys for Defendant.
JOSEPH CAMPBELL,
Attorney for Plaintiff.

53 This indenture, made the thirty-first day of January in the year of our Lord one thousand eight hundred and ninety-three between William E. Dodge and D. Willis James, both of the City and County of New York and State of New York, parties of the first part, and The United State Globe Mines, a corporation duly organized under the laws of the State of New York, party of the second part,

Witnesseth: That the said parties of the first part, for and in consideration of Five Hundred Thousand Dollars of the United States of America to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, remised, released and forever quitclaimed and by these presents do grant, bargain, sell, remise, releas and forever quitclaim unto the said party of the second part and to its successors and assigns all the following mentioned and described mineral properties, mining claims and millsites with the appurtenances thereto belonging, situate lying and being in the Globe Mining District, Gila
54 County (formerly Pinal County), Territory of Arizona, and more particularly described as follows: All that certain tract or mining claim, called and known as the Arcador Copper Mine, notice of location whereof was received in Book of Mines page 177, Gila County records, and for which on the 21st day of May 1892, as United States Patent was issued to Joseph McCarter, Trustee, numbered in the General Land Office 24363, Mineral Certificate Number 492, Recorded in the General Land Office Vol. 226, pages 76 to 78 inclusive; to which patent reference is hereby made for a more particular description of said property. All that certain tract or mining claim known as and called The Cuprite for which on the 16th day of August 1883, a United States Patent was issued to Joseph McCarter, personally, numbered in the General Land Office 8101, Mineral Certificate Number 150, Recorded in the General Land Office Vol. 100 pages 137 to 140 inclusive; and further recorded in Records of Deeds to Mines, Gila County, Arizona Territory Book 2, page 161, to which patent is hereby made for a more particular description of said property. All that certain ledge,
55 lode, lead or mining claim known as and called The Grey; for which on the 17th day of September 1884, an United States Patent was issued to Joseph McCarter, Trustee, numbered 157, Recorded in the General Land Office, Vol. 47 pages 117 to 120 inclusive; and further recorded in Records of Deeds to Mines, Gila County, Arizona Territory, Book 2, page 288. To which patent reference is hereby made for a more particular description of said property. All that certain ledge, lode, or mining claim known as and called The Hoosier; for which on the 17th day of September 1884, an United States Patent was issued to Joseph McCarter, Trustee, numbered in the General Land Office Vol. 117, pages 121 to 125 inclusive; and further recorded in the Records of Deeds to Mines, Gila County, Arizona Territory, Book 2 page 283. To which patent reference is hereby made for a more particular description of said property. All that certain tract or mining claim called and known as The Nevada Copper Mine, notice of location whereof was recorded

in Book 7 page 187, Globe Mining District and Gila County Records,
and for which on the 21st day of May 1892, an United States
Patent was issued to Joseph McCarter, Trustee, numbered in
the General Land Office 21362, Mineral Certificate Number
491. Recorded in the General Land Office Vol. 226, pages 73 to 75
inclusive. All that certain tract or mining claim called and known as
The Yuma Copper Mine, notice of location whereof was recorded
in Book 8 of Mines pages 52 and 53 Globe Mining District and
Gila County Records, and for which on the 21st day of May 1892,
an United States Patent was issued to Joseph McCarter, Trustee,
numbered on the General Land Office 21364 Mineral Certificate num-
ber 493 Recorded in the General Land Office Vol. 226, pages 79 to
81 inclusive. All that certain piece or parcel of land called and
known as The Hoosier Mill site, particularly described as follows:
Commencing at the Easterly Centre monument of the Homeside
Mining Claim, being a stone monument erected by an ash dump on
the edge of Pinal Creek as located by A. Douglas Skinner, and re-
corded in Book 1 page 238 of Mines, Gila County Records; said
monument being about one thousand (1000) feet East from the
Globe Quartz Mill, and about one hundred and thirty (130)
feet East from the South East Corner monument of the Isa-
bella Mill Site, and running thence East seven hundred and
twenty-six (726) feet to a stone monument; thence South three
hundred (300) feet to a stone monument, thence seven hundred
and twenty-six (726) feet West to a stone monument; thence North
three hundred (300) feet to the place of beginning; containing five
acres. The said properties being the same which were conveyed by
Joseph McCarter individually and as Trustee, and Eliza J. McCarter
to the parties of the first part by deed dated June 10th 1892 and re-
corded in the office of the Recorder of Gila County, A. T. on July
15th, 1892, in Book 3 of Records of Mine Deeds page 228 to 232.
The O'Dougherty and Big Johnny mines situate in Globe Mining
District, County and Territory aforesaid and about three miles north-
erly of the town of Globe in said County of Gila, being the same
property which was conveyed by the Board of Supervisors of the
County of Gila, Territory of Arizona, to the parties of the first part
by deed dated December 15th, 1890 and recorded in said
Recorder's office on January 2, 1891, in Book 3 of Records
of Mines page —. The "Birds Nest Mine" notice of location
whereof was recorded in said Recorder's office in Book 1 of Records of
Mines page 618, reference to said record being had for a more full
and complete description of said mine; being the same property
which was conveyed to the parties of the first part by four several
deeds as follows: One by Bernard McCoy dated June 27th, 1892, and
recorded in said Recorder's Office on July 21, 1892 in Book 3 Record
of Mine Deeds, page 234; one by Sallie H. McCabe, Executrix, etc.,
dated September 8th, 1892, and recorded in said Recorder's office
on September 10th, 1892 in Book 3 Records of Mine Deeds page 258,
one by Winthrop House, Administrator etc., dated September 9th,
1892, and recorded in said Recorder's Office on September 10th, 1892,
in Book 3, Records of Mine Deeds page 260 and one by Charles T.

Martin dated June 27, 1892, and recorded in said Recorder's office on July 24, 1892, in Book 3 Records of Mine Deeds page 235. The "Buckeye Copper" Mine and the "Hogeye" mine, being the
59 same properties which were conveyed to the parties of the first part by Elisha Lieurance and James Lieurance by deed dated April 16th, 1892, and recorded in said Recorder's office on April 20th, 1892 in Book 3 Records of Mine Deeds page 203. Also all their right, title and interest in and to those two certain mines known as the "Budget" mine and the "Quarter" mine, the notices of location whereof were recorded in said Recorder's office in Book 3 of Records of Mines at pages 427 and 475, respectively, and being the same properties which were conveyed to the parties of the first part by W. H. Woodson by deed dated November 28th, 1891, and recorded in said Recorder's office in Book 3 of Records of Mine Deeds at page 185 on December 9th, 1891 and by deed recorded in said Book 3 page 288. The "Centraylia" mine notice of location whereof was recorded in said Recorder's office in Book 5 at pages 192 and 193 Records of the Globe Mining District and being the same property which was conveyed to the parties of the first part by E. Lieurance and James Lieurance and N. F. Salter by deed
60 dated April 16th, 1892 and recorded in said Recorder's office on April 18, 1892, in Book 3 of Records of Mine Deeds page 200. The "Transit" mine, the "Delaware" mine and the "Geneva" mine, notices of location whereof were recorded in said Recorder's Office in Book 4 of Records of Mines at pages 28 and 29, and being the same properties which were conveyed to the parties of the first part by P. Oates and T. H. Harris by deed dated June 12th, 1891, and recorded in said Recorder's office on June 13, 1891, in Book 3, Records of Mine Deeds page 156. The "Gladiator" mine, the notice of location whereof was recorded in said Recorder's office in Book 5 at pages 194 and 195, District Records of Globe Mining District, and being the same property which was conveyed to the parties of the first part by William T. McNelly and Charles T. Martin by deed dated December 14th, 1891, and recorded in said Recorder's office on December 14, 1891, in Book 3 Records of Mine Deeds page 186. The "Josh Billings" mine, the notice
61 of location whereof was recorded in said Recorder's office in Book 3 of Mines at pages 211 and 212, and being the same property which was conveyed to the parties of the first part by Charles A. Baldridge by deed dated May 31st, 1892, and recorded in said Recorder's office on May 31, 1892, in Book 3 Records of Mine Deeds page 216. The "Kirkey" mine, the notice of location whereof were recorded in said Recorder's office in Book 3 of Mines at page 397, and being the same property which was conveyed to the parties of the first part by Charles A. Baldridge and William Stevenson by deed dated May 31st, 1892, and recorded in said Recorder's office on May 31, 1892, in Book 3 Records of Mine Deeds page 214. The "Leita" mine, the notice of location whereof was recorded in said Recorder's office in Book 4 of Records of Mines at page 28, and being the same property which was conveyed to the parties of the first part by Philip Oates and Theodore H. Harris

by deed dated June 1, 1892 and recorded in said Recorder's office on June 1, 1892, in Book 3 Records of Mine Deeds page 220. The "Lizzie" mine the notice of location whereof was recorded
62 in said Recorder's office in Book 3 of Mines pages 292 and 293, and being the same property which was conveyed to the parties of the first part by Addison T. Epley and S. Richard Epley by deed dated October 13, 1892 and recorded in said Recorder's Office on October 13, 1892 in Book 3 Records of Mine Deeds page 270. The "Maggie" Mine the notice of location whereof was recorded in said Recorder's office in Book 2, of Mines at page 4, and being the same property which was conveyed to the parties of the first part by Charles A. Baldridge by deed June 22, 1892, and recorded in said Recorder's office on July 21, 1892, in Book 3 Records of Mine Deeds page 232. All of an individual one-half interest in and to that certain mine or mining claim known as and called the "90" Mine the notice of location whereof was recorded in said Recorder's office in Book 3 of Records of Mines page 476, and being the same property which was conveyed to the parties of the first part by C. Chapman by deed dated November 25th, 1891 and recorded in said Recorder's office on December 9th, 1891, in
63 Book 3 of Records of Mine Deeds page 184. The "Transit" mine the notice of location whereof was recorded in said Recorder's office in Book 3 of Records of Mines at pages 449 and 450, and being the same property which was conveyed to the parties of the first part by John H. Canavan and Niles S. Berray by deed dated November 9th, 1891 and recorded in said Recorder's office on November 10th, 1891 in Book 3 Records of Mine Deeds page 172. The "Amy" mining claim located by the parties of the first part January 25th, 1892, the notice of location whereof was recorded in said Recorder's office on January 28, 1892 in Book 4 of Mines page 114. The "Antler" mining claim, located by the parties of the first part November 21, 1891, the notice of location whereof was recorded in said Recorder's office on January 7, 1892 in Book 4, of Mines page 88. The "Belle" mining claim located by the parties of the first part January 3, 1892, the notice of location whereof was recorded in said Recorder's office on January 8, 1892 in Book 4 of Mines page 89. The "Belmont" mining claim located by the parties of the first part January 1, 1895,
64 the notice of location whereof was recorded in said Recorder's office on January 6, 1893 in Book 4 of Mines page —. The "Copper Prince" mining claim located by the parties of the first part on July 28, 1891, the notice of location whereof was recorded in said Recorder's office on August 9, 1891, in Book 4 of Mines page 52. The "Green Copper" mining claim located by the parties of the first part on November 17, 1891, the notice of location whereof was recorded in said Recorder's office on January 4, 1892 in Book 4 of Mines page 70. The "Jasper" mining claim located by the parties of the first part on November 18, 1891, the notice of location whereof was recorded in said Recorder's office on January 13, 1892 in Book 4 of Mines page 98. The "Little Jack" mining claim located by the parties of the first part on December

7, 1891, the notice of location whereof was recorded in said Recorder's office on January 8th, 1892 in Book 4 of Mines page 89. The "Little Jenny" mining claim located by the parties of the first part on December 3, 1891, the notice of location whereof was re-
65 corded in said Recorder's office on January 8, 1892 in Book 4 of Mines page 88. The "Life Oak Extension" mining claim located by the parties of the first part on November 17, 1891, the notice of location whereof was recorded in said Recorder's office on January 4, 1892 in Book 4 of Mines page 72. The "Maggie No. 2" mining claim located by the parties of the first part, on December 13, 1891, the notice of location whereof was recorded in said Recorder's office on January 4, 1892, in Book 4 of mines page 76. The "Oak Spring" mining claim located by the parties of the first part on November 18th, 1891, the notice of location whereof was recorded in said Recorder's office on December 19th, 1891 in Book 4 of Mines page 63. The "Vixon" mining claim located by the parties of the first part on January 25, 1892, the notice of location whereof was recorded in said Recorder's office on January 28, 1892, in Book 4 of Mines page 115. The "Antler Mill Site" located by the parties of the first part on January 26, 1892, the notice of location whereof was recorded in said Recorder's office on January 29, 1892, in Book 3 of Mines, page 582. The
66 "Copper Prince" millsite located by the parties of the first part on January 26, 1892, the notice of location whereof was recorded in said Recorder's office on January 29, 1892, in Book 3 of Mines page 583.

Together with all the dips, spurs and angles, and also all the metals ores, gold and silver bearing quartz, rock and earth thereon, and all the rights, privileges and franchises thereto incident, appendant and appurtenant or therewith usually had and enjoyed, and also all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining, and the rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in or to the said premises. To have and to hold all and singular the said premises, together with the appurtenances and privileges thereto incident unto the said party of the second part its successors and assigns forever.

In witness whereof, the said parties of the first part have
67 hereunto set their hands and seals the day and year first above written.

W. E. DODGE. [Wafer Seal.] [SEAL.]
D. WILLIS JAMES [Wafer Seal.] [SEAL.]

Signed, sealed and delivered in the presence of

ISIDOR GRAYHEAD.
ROBT H. PATTON TIGHE

STATE OF NEW YORK,
City and County of New York, ss.

I, Isidor Grayhead, a notary public in and for said County in the State aforesaid, do hereby certify that William E. Dodge and D. Willis James personally known to me to be the persons whose names are subscribed to the annexed deed, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the said instrument of writing as their free and voluntary act, for the usages, purposes and consideration therein set forth.

Given under my hand and notarial seal, this first day of February, A. D., 1893.

[NOTARY'S SEAL.] ISIDOR GREYHEAD,
Notary Public, N. Y. Co.

68 Filed and recorded at request of Edmund Coffin, Jr., at 10 o'clock A. M. Feb. 17th, 1893.

This indenture, made the Fifteenth day of December in the year of our Lord one thousand eight hundred and ninety between the Board of Supervisors of the County of Gila, Territory of Arizona, the party of the first part and D. W. James and W. E. Dodge of the York City, N. Y., the party of the second part, witnesseth that

Whereas, B. F. Pascoe, Sheriff and ex-officio Tax Collector of said County, did by virtue of the provisions of an Act of the Legislature of Arizona, entitled, "An Act Amendatory to Chapter XXXIII of Compiled Laws of Arizona Territory, to provide revenue for the Territory of Arizona and the several counties thereof, approved April 12, 1875," approved March 10, 1881, as such Tax Collector, heretofore and at the time hereinafter mentioned, towit: On the third Monday of December, 1883, at the close of his official business on that day, enter upon the duplicate assessment roll a statement that
69 he had made a levy upon all property therein assessed, the taxes upon which had not been paid, and did immediately ascertain the total amount of taxes then delinquent and file in the office of the Treasurer of said County, a statement of said amount verified by him, and did make out a list of all persons and property then owing taxes in said County, to the Territory of Arizona and to the County of Gila; together with the costs and charges thereon and which said list was duly verified by him, and was completed on the last day of December, 1883, and did include the property first hereinafter described.

That said property was assessed for the fiscal year commencing on the first Monday in March, 1883, for Territorial and County Taxes as follows: Work, Jas. H. Mortgage on O'Dougherty and Big Johnny Copper mines, Globe Mining District, $25,000 Tax $725.00 per cent added $36.25, fees $45.67, penalty $1.00 $807.92 being liable for
70 $807.92, the amount of taxes and costs due on the said third Monday of December, 1883, was on the 10th day of March, 1884, in accordance with law, offered for sale to pay said taxes and costs, at public auction, in front of the sheriff's office (there being no court house) in said county; that on the day said property

was first offered for sale at said auction, there was no bidder therefor, and at a subsequent day of auction, to-wit: on the 12th day of March, 1884, said property was again offered for sale for said taxes and costs, and there being still no bidder or purchaser therefor, the same, and the whole thereof, was by the said B. F. Pascoe, Sheriff and ex-officio Tax Collector as aforesaid, struck off to the Territory of Arizona, as the purchaser pursuant to law, and the said Territory became the purchaser of said described piece or parcel of land so sold as aforesaid for said taxes and costs, and that said real estate was sold subject to redemption, pursuant to the Statute in such cases made and provided, and that unless redeemed within six months from date of purchase, said purchaser would be entitled to a
71 deed at the expiration of six months from date of sale. Whereupon the said sheriff and ex-officio Tax Collector delivered to the Treasurer of said County a certificate of said sale as is by law directed to be given, and a duplicate of such certificate was duly filed by the said Sheriff and ex-officio Tax Collector, in the office of the Recorder of said County of Gila.

And whereas, six months after said sale had expired, without any redemption of said premises having been made, and

Whereas, G. S. Van Wagenen, Treasurer and ex-officio Tax Collector of said County, by virtue of and in pursuance of the Statutes in such cases made and provided, for and in consideration of the premises and the sum of money to said G. S. Van Wagenen, Treasurer and ex-officio Tax Collector credited pursuant to law, did on the 10th day of December, 1885, bargain, sell, convey and confirm unto the said Territory of Arizona and to its successors and assigns forever, all the right, title, interest and claim which the said Jas. H. Work had on the said 1st Monday of March, 1883 in and to
72 all that certain mining property situate, lying and being in the County of Gila, Territory of Arizona, as hereinbefore particularly described, and

Whereas, the Board of Supervisors of the County of Gila, Territory of Arizona, did on or before the first Monday in November, A. D. 1886, prepare a list of all the real estate held by the Territory of Arizona, by tax deed, including the property hereinbefore and hereinafter described, and situated in the County of Gila, giving a full and intelligent description of each parcel of said real estate so held by said Territory, together with the name of the former owner thereof, when known, and the total amount of the taxes, penalties and costs, including the unpaid charges of the Collector and Recorder, for which said deed from said Tax Collector was given to each of said several tracts of real estate, and did advertise all of said several tracts of real estate for sale at private sale, at the office of the Board of Supervisors, by publication of said list according to law, and did also advertise the same by posting said list in two or
73 more public places in each election precinct wherein any of said real estate is situated, and by keeping such notice and list so continuously posted in the Supervisors' Office and Sheriff's Office of said County, and also at the front door of the house last used for a court house.

Now, therefore, this indenture witnesseth. That the said Board of Supervisors of said County of Gila has by virtue of the power in them vested by the Statute in such cases made and provided, for and in consideration of the sum of $1,365.49 lawful money of the United States, in hand paid by said D. W. James and W. E. Dodge, the receipt whereof is hereby acknowledged, bargained, sold, conveyed and confirmed, and by these presents does grant, bargain, sell, convey and confirm unto the said D. W. James and W. E. Dodge and to their heirs and assigns forever, all the right, title, interest and claim which the said Territory of Arizona has or ever had in or to all of that lot, piece or parcel of land situate, lying and being in the said County of Gila, Territory of Arizona, herein-
74 before described, which said premises are particularly described as follows, to-wit: The O'Dougherty and Big Johnny mines, situate in Globe Mining District, County and Territory aforesaid, and about three miles northerly of the town of Globe in said County of Gila.

Together with all and singular the hereditaments and appurtenances thereunto belonging, or in any wise appertaining.

To have and to hold the said premises with the appurtenances unto the said parties of the second part, their heirs and assigns forever.

In Witness whereof, the Board of Supervisors of the County of Gila, Territory of Arizona, has caused this deed of conveyance to be made, executed and delivered by its Chairman and Clerk under the Official Seal of said Board of Supervisors of said County, as required by law.

[SUPERVISOR'S SEAL.] PATRICK SHANLEY,
Chairman Board of Supervisors.
75 CHAS T. MARTIN,
Clerk Board of Supervisors.

Signed, Sealed and delivered in the presence of
J. D. McCABE.

TERRITORY OF ARIZONA,
County of Gila, ss:

Before me, J. D. McCabe, a notary public, of the Territory of Arizona, in and for Gila County, personally appeared Patrick Shanley, Chairman of the Board of Supervisors of said Gila County, Arizona Territory, and Chas. T. Martin, Clerk of said Board of Supervisors of Gila County, known to me to be persons whose names are subscribed as such Chairman and Clerk respectively, to the foregoing instrument, and each acknowledged to me severally that he executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office this 15th day of December, 1890.

[NOTARY'S SEAL.] J. D. McCABE,
Notary Public, Gila County, A. T.

76 Filed and recorded at request of J. D. McCabe at 30 minutes past 11 o'clock A. M., January 2nd, 1891.

CHAS. T. MARTIN,
County Recorder.

77 And on to-wit: the eleventh day of November, 1907, came the defendant in error by its attorneys and filed in the clerk's office of said Court in said entitled cause its certain Motion to Dismiss Writ of Error, in words and figures following, to-wit:

In the Supreme Court of the Territory of Arizona.

JAMES H. WORKS, Plaintiff in Error,
vs.
THE UNITED GLOBE MINES, a Corporation, Defendant in Error.

Motion to Dismiss Writ of Error.

Comes now the United Globe Mines, a corporation, named as defendant in error in the above entitled cause, by its attorneys, Herring, Sorin & Ellinwood, and moves the Court upon the record and the papers now on file in this Court in said cause and in the case entitled James H. Work, Appellant, v. The United Globe Mines, appellee, and designated as case No. 979, to dismiss the writ of error heretofore sued out by said plaintiff in error, and to dismiss this cause in this Court upon the following grounds:

I.

That, as shown by the record and the papers on file in this Court in said cause No. 979, the above named plaintiff in error took an appeal to this Court from a judgment rendered on the 26th
78 day of February, 1906, by the District Court of the Fifth Judicial District of the Territory of Arizona, in and for the County of Gila, in favor of said defendant in error in a certain action wherein said James H. Work was plaintiff and the said The United Globe Mines was defendant, and thereafter perfected said appeal by filing a bond on appeal in said Court, and that said appeal was docketed in this Court, being entitled James H. Work, Appellant, v. The United Globe Mines, a corporation, Appellee, and designated as case No. 979;

That on the 18th day of January, 1907, this Court made an order dismissing said appeal for want of prosecution;

That thereafter said James H. Work filed in the said District Court a petition for a writ of error to review the said judgment theretofore rendered by said District Court on said 26th day of February, 1906, as aforesaid (being the same judgment from which said appeal had been taken), and said writ of error was granted on the 14th day of February, 1907, and a Summons in Error served upon said The United Globe Mines on the 15th day of February, 1907;

That the said order of this Court dismissing said appeal is a bar

to any further proceedings by said James H. Work to review said judgment and is a bar to said writ of error, and that said James H. Work having elected to appeal from said judgment of said District Court to this Court, and having perfected his said appeal from said judgment by filing an appeal bond in said District Court and the said appeal having been dismissed by order of this Court as aforesaid, is thereby precluded from thereafter suing out said writ of error, and the same should be quashed and dismissed;

II.

That subsequent to suing out said writ of error and after the service of the Summons in Error upon said defendant in error, the said James H. Work, still pursuing and relying upon his remedy by appeal, filed in this Court on the 14th day of March, 1907, a motion to reinstate said appeal, which motion was by the Court denied on the 22nd day of March, 1907;

That thereafter the said James H. Work, still relying upon his remedy by appeal, filed in this Court on April 5th, 1907, a motion for a rehearing of the said motion to reinstate said appeal, which motion was by the Court denied on the 24th day of May, 1907;

That upon the ground that said Work pursued his remedy by appeal to review said judgment after the issuance of said writ of error and that said proceedings by writ of error were instituted prior to the abandonment of his said remedy by appeal, the said writ of error should be dismissed;

III.

That every fact essential to support the judgment of the trial court in favor of defendant is expressly admitted in the Agreed Statement of Facts, upon which the parties submitted the matter in controversy between them to the trial court, as appears by the record herein;

That no ground of review by writ of error exists;

That the sole and manifest purpose of said James H. Work in prosecuting this writ of error is delay.

HERRING, SORIN & ELLINWOOD,
Attorneys for Defendant in Error.

And on the same day to-wit, the eleventh day of November, 1907, came the plaintiff in error by his attorney and filed in the clerk's office of said court in said entitled cause his certain Answer to Motion to Dismiss Writ of Error, in words and figures following, to-wit:

In the Supreme Court of the Territory of Arizona.

JAMES H. WORK, Plaintiff in Error,
vs.
THE UNITED GLOBE MINES, a Corporation, Defendant in Error.

Now comes the Plaintiff in Error herein, James H. Work, and for answer to the motion of Defendant in Error, The United Globe

Mines, to dismiss the writ of error sued out by Plaintiff in Error, and to dismiss this cause, says, that the said writ of error and the
81 said cause ought not to be dismissed for the following reasons:

For the reason that the perfecting of an appeal and the dismissal of said appeal for want of prosecution by this court, on its own motion, does not deprive plaintiff in error of his right to have the judgment of the lower court reviewed by a writ of error.

For the reason that the writ of error herein was not sued out for purposes of delay.

For the reason that the judgment obtained by defendant in error in the court below is not suspended by the writ of error.

For the reason that plaintiff in error is entitled to have the judgment of the court below reviewed by this court.

For the reason that the defendant in error is claiming title to the real property which is the subject matter of this litigation, by virtue of the statute of limitations attempted to be set up in a cross complaint in the court below, which cross-complaint does not contain facts sufficient to constitute a cause of action.

For the reason that the defendant in error, the United Globe Mines, a foreign corporation, is claiming title to the real property which is the subject matter of this litigation, by virtue of the statute of limitations of the Territory of Arizona, and a foreign corporation cannot avail itself of such statute of limitations.

82 Wherefore, plaintiff in error prays that said motion be denied.

FRANCIS M. HARTMAN,
Attorney for James H. Work, Plaintiff in Error.

And on to-wit: the ninth day of December, 1907, came the plaintiff in error by his attorney and filed in the clerk's office of said court in said entitled cause his certain Amended Answer to Motion to Dismiss Writ of Error, in words and figures following, to-wit:

In the Supreme Court of the Territory of Arizona.

JAMES H. WORK, Plaintiff in Error,
vs.
THE UNITED GLOBE MINES, a Corporation, Defendant in Error.

Amended Answer of Plaintiff in Error to the Motion of the United Globe Mines, Defendant in Error, to Dismiss Writ of Error.

Now comes the Plaintiff in Error herein, James H. Work, and for amended answer to the motion of Defendant in Error, The United Globe Mines, to dismiss the Writ of Error herein *and* respectfully represents to your honorable Court, as follows:

That heretofore on November 16th, 1903 Plaintiff in Error herein, James H. Work, brought suit in the District Court of the Fifth Judicial District of the Territory of Arizona in and for the County of Gila, against the United Globe Mines, a foreign corporation, organized and existing under and by virtue of the laws of the State of

New York to quiet the title of two certain patented mines known and described as the "Big Johnny" and "O'Dougherty" mines
83 situated in the Globe Mining District, Gila County, Arizona Territory.

The Amended Complaint, upon which said action was tried in said District Court, being in the following words and figures to-wit:

"Plaintiff for his complaint alleges that he is now and has been continuously for more than twenty-five years past a resident of the City of New York, State of New York.

That the defendant is a corporation duly incorporated under and by virtue of the Laws of ——, and has a duly appointed legal agent residing at Globe, Gila County, Arizona Territory.

That the plaintiff is now and has been for a long period of time the owner of the following described real estate lying and being in said County of Gila, Territory of Arizona, to-wit: That certain patented mine situate on Globe Mining District and bounded and described as follows: Beginning at a pine post three inches square marked O. D. No. 1, a monument of stones around it, being at rock on edge of open cut and shaft at bottom of same thence First Course along Northeast boundary of the Big Johnny Mine South 51 degrees, 30 minutes East three hundred feet to the Southeast corner of the claim, a cedar post three inches square marked O. D. No. 2, a monument of stones around it, the same being the Northeast corner of said Big Johnny claim from which the United States Mineral Monument No. 2 Globe Mining District bears South 1 degree, 40 minutes West four thousand and ninety-five feet distant. Shaft No. 2 bears
84 North 9 degrees, 5 minutes West three hundred and fifteen feet distant and Shaft No. 3 bears north 6 degrees, 16 minutes west three hundred and forty feet distant. Thence Second course North 31 degrees, 30 minutes East fifteen hundred feet to the Northeast corner of the claim, a cedar post three inches square marked O. D. No. 3, a monument of stones around it, the same being the Southeast corner of the Kennedy Mine. Thence Third course North 51 degrees, 30 minutes West three hundred feet to a cedar post four inches square marked O. D. No. 4, a monument of stones around it, six hundred feet to the Northwest corner of the claim, a cedar post four inches square marked O. D. No. 5, a monument of stones around it, the same being the Southwest corner of said Kennedy Mine. Thence Fourth Course South 31 degrees, 30 minutes West fifteen hundred feet to Southwest corner of the claim, a cedar post four inches square marked O. D. No. 6, a monument of stones around it, the same being the Southwest corner of said Big Johnny Mine. Thence Fifth Course South 51 degrees, 30 minutes East three hundred feet to place of beginning. Said mine being designated and platted by the Surveyor General of the Territory of Arizona and extending fifteen hundred feet in length along said O'Dougherty vein and containing twenty five and 45-100 acres of land.

85 That certain patented mine known as the "Big Johnny" Mine situate in said Globe Mining District and bounded and described as follows: Beginning at a pine post three inches square marked B. J. No. 1, a monument of stones around it, being at rock

edge of open cut and shaft at bottom of same. Thence First Course South 51 degrees, 30 minutes East three hundred feet to Northeast corner of the claim, a cedar post three inches square marked B. J. No. 2, a monument of stones around it, the same being the Southeast corner of Lot 57, the O'Dougherty lode claim from which the United States Mineral Monument No. Two Globe Mining District bears South 10 degrees, 40 minutes West four thousand and ninety-five feet distant. Face of tunnel No. 2 bears South 89 degrees, 49 minutes West four hundred and ninety feet distant. Cut No. 2 bears South 78 degrees, 50 minutes West six hundred and thirty feet distant. Cut No. 3 bears South 77 degrees, 35 minutes West six hundred and thirty-five feet distant and Shaft No. 2, bears South 73 degrees, 5 minutes West seven hundred and forty-five feet distant. Thence Second Course South 39 degrees, 50 minutes West fifteen hundred feet to Southeast corner of the claim, a pine post three inches square marked B. J. No. 3, a monument of stones around it, from which the United States Mineral Monument No. 2 Globe Mining District bears South 18 degrees, 35 minutes East three thousand two hundred and ninety feet distant. Thence Third Course North 51 degrees 30 minutes West three hundred feet to a pine post three inches square marked B. J. No. 4, a monument of stones around it, six hundred feet to Southwest corner of the claim a pine post three inches square marked B. J. No. 5,
86 a monument of stones around it. Thence Fourth Course North 49 degrees, 15 minutes East fifteen hundred feet to Northwest corner of the claim, a cedar post four inches square marked B. J. No. 6, a monument of stones around it, the same being the Southwest corner of Lot 57. Thence Fifth Course South 51 degrees, 30 minutes East three hundred feet to place of beginning. Said mine being designated and platted by the Surveyor General of the Territory of Arizona as Lot No. 58 extending fifteen hundred feet along the said Big Johnny vien or lode and containing twenty and 30-100 acres of land.

That said plaintiff claims title in fee to the said premises and said defendant claims an estate or interest therein adverse to said plaintiff.

That said claim of said defendant is without any right whatever and that the said defendant has not any right, estate, title or interest whatever in or to said premises or any part thereof.

Wherefore, plaintiff prays that the defendant may be required to set forth the nature of his claim and that all adverse claims of the defendant may be determined by a decree of this Court. That by said decree it be decreed and adjudged that the defendant has no estate or interest whatever in or to said land and premises and that the title of plaintiff is good and valid.

That the defendant be forever enjoined and debarred from asserting any claim whatever in or to said land and premises adverse to the plaintiff and for such other and further relief as to the Court may seem meet the premises considered and for costs
87 of suit.

JOSEPH CAMPBELL,
Attorney for Plaintiff.

TERRITORY OF ARIZONA,
County of Gila, ss:

Joseph Campbell being duly sworn say- that he is the attorney for plaintiff and makes this affidavit in his behalf. That he has read the foregoing complaint and knows the contents thereof. That the same is true of his own knowledge except as to those matters therein stated on information and belief and as to those matters he believes it to be true.

JOSEPH CAMPBELL.

Subscribed and sworn to before me this 8th day of June, 1905.
[SEAL.] GEORGE H. SMALLEY,
Clerk District Court."

The Defendant in Error herein and Defendant below, in its answer denies that plaintiff was the owner of the premises, and alleged that it was the owner and in possession of and entitled to the possession of the said mines; and that it claimed title to the said mines by virtue of the statute of limitations of the Territory of Arizona, and also attempted to plead the five year statute of limitations of the Territory of Arizona against plaintiff's right of action.

Defendant also set up a second and separate defense to plaintiff's cause of action, and claimed title to the said mines by virtue of the ten year statute of limitations of the Territory of Arizona.

Defendant's answer to the Amended Complaint of plaintiff is in the following words and figures, to-wit:

"*Answer to Amended Complaint.*

(Title of Court and Cause.)

Comes now the defendant, The United Globe Mines, a corporation, and answers the amended complaint in the above entitled action as follows:

1. Defendant alleges that it is a corporation duly organized and existing under and by virtue of the laws of the State of New York, and having its principal place of business near the town of Globe, in Gila County, Arizona Territory.

2. Defendant denies that the plaintiff is the owner of the premises described in said complaint, or any part thereof.

3. Defendant alleges that it is the owner of and in the possession of and entitled to the possession of those certain patented mines known as the O'Dougherty Mine and the Big Johnny Mine, situated in the Globe Mining District, in said County and Territory, and being the premises described in said complaint; that defendant for more than five years before the commencement of this action, has been in the actual, continuous, uninterrupted, peaceable, exclusive, open, notorious, hostile and adverse possession of said premises, and has been cultivating, using, enjoying and working the same, paying

taxes thereon, and holding and claiming the same and the title thereto adversely to plaintiff and all the world under a deed
89 from William E. Dodge and D. Willis James conveying said premises to this defendant, which deed is dated January 31st, A. D., 1893, and which said deed was duly recorded on the 17th day of February, A. D., 1893, in the office of the County Recorder of Gila County, said Territory, in Book 3 Deeds of Mines, at page 299.

4. And defendant alleges that the cause of action, if any, stated in the complaint herein, did not accrue within five years next before the commencement of this action.

II.

For a second and separate defense to said amended complaint

1. Defendant denies that plaintiff is the owner of the premises described in said complaint, or any part thereof.

2. Defendant alleges that it and its grantors and predecessors in interest have been in the actual, continuous, uninterrupted, peaceable, exclusive, open, notorious, hostile and adverse possession of said premises, cultivating, using, enjoying and working the same, and holding and claiming the same adversely to plaintiff and to all the world, for more than ten years before the commencement of this action; and defendant alleges that the cause of action, if any, stated in the complaint herein did not accrue within ten years next before the commencement of this action.

Wherefore, defendant prays that it be adjudged and de-
90 creed to be the owner of and entitled to the possession of said O'Dougherty and Big Johnny Mines, and for such other and further relief as may — just and equitable in the premises, and for the costs of this action.

HERRING & SORIN,
Attorneys for Defendant.

TERRITORY OF ARIZONA,
County of Gila, ss:

Niles S. Berray, being first duly sworn, on oath says, that he has read the foregoing answer to Amended Complaint and knows the contents thereof; that the allegations of the said Answer are true in substance and in fact; that affiant is the Superintendent and duly appointed Resident Agent of said defendant, The United Globe Mines, a corporation, and makes this affidavit for and in behalf of said defendant.

NILES S. BERRAY.

Subscribed and sworn to before me this 1st day of July, A. D. 1905.

My commission expires June 4th, 1906.

W. D. FISH,
Notary Public, Gila County, Arizona.

Filed July 12, 1905."

91 The case was submitted on an agreed statement of facts, and briefs filed in the Court below.

The facts briefly stated are as follows:

That on November 24th, 1882, Samuel B. Benn, owner of the said mines, conveyed them to the Tacoma Copper Company, a corporation, by deed duly recorded.

That on November 23rd, 1882, the said Benn executed to James H. Work, plaintiff below, a mortgage upon the said mines to secure the payment of Twenty-five Thousand Dollars ($25,000.00) within Ninety (90) days, which mortgage was duly recorded December 5th, 1882.

That on February 10th, 1884, James H. Work brought suit in the District Court of Gila County, Arizona, against the Tacoma Copper Company, to foreclose the said mortgage; and on September 25th, 1884, judgment and decree and an order of sale was entered. On December 29th, 1884, the property was sold under said decree, at which sale the plaintiff, Work, became the purchaser and received from the Sheriff a certificate of sale; and on February 10th, 1885, received from the Sheriff a deed for the said mines, which deed was duly recorded on February 10th, 1886.

That on January 24th, 1885, a patent was issued by the United States to the Tacoma Copper Company for said mines and duly recorded.

That James H. Work has never conveyed his interest in said mines to anyone whomsoever.

92 That in 1883, plaintiff's mortgage for $25,000.00 on the said mines was assessed for taxation under the law then in force taxing mortgages; then the said mortgage went delinquent and was offered for sale at public auction to pay the said taxes; that there was no bidder therefor and the property (the mortgage) was struck off to the Territory of Arizona.

That thereafter, D. Willis James and Wm. E. Dodge paid to the Territory the taxes on the mortgage with costs and penalties and obtained from the Board of Supervisors of said County a deed which was recorded on January 2nd, 1891.

That on January 31st, 1893, James and Dodge made a deed to The United Globe Mines, purporting to convey to the United Globe Mines the said property, which deed was recorded February 17th 1893, and that the defendant, The United Globe Mines, went into possession of the property and worked the same.

It was also admitted by the agreed statement of facts that the defendant below, The United Globe Mines, is a foreign corporation, organized under the laws of the State of New York.

The case was submitted on the agreed statement of facts and briefs, as above stated, and on February 26th, 1906, the District Court rendered a judgment in favor of defendant and against plaintiff, adjudging and decreeing that the defendant, The United Globe Mines, was the owner of and entitled to the possession of the said Mines, and that the title of the defendant, The United Globe Mines, to said premises be quieted against all claims or demands of the plaintiff, James H. Work; and on the same day motion for new trial

was filed and overruled, to which ruling of the Court plaintiff excepted and gave notice in Open Court of appeal to the Su-
93 preme Court of the Territory of Arizona, from said judgment and from the order overruling the motion for new trial.

James H. Work was represented in the Court below by Joseph Campbell Esq., but after the case was submitted and prior to the rendition of the judgment in the Court below, the said Joseph Campbell departed this life, and the plaintiff Work, being a resident of the City of New York, State of New York, by telegraphic correspondence employed George J. Stoneman Esq., of Globe, Arizona, to file motion for new trial, giving notice of appeal to the Supreme Court, and file appeal bond for costs, which appeal bond for costs was filed in due time.

That through the courtesy of the Attorneys for the United Globe Mines, Messrs. Herring, Sorin & Ellinwood, the time within which to complete the preparation of the transcript on appeal was extended from time to time, that some time in August, 1906, the said James H. Work employed Francis M. Hartman, Esq., of Tucson, Arizona, to represent him in said matter and to prepare and perfect the appeal.

That during the latter part of August, 1906, the said Hartman instructed the Clerk of the District Court of Gila County to make up the transcript of the record on appeal, certify to the same, and send it to the Supreme Court.

That on August 25th, 1906 the said Hartman was advised by the Clerk of said Court that the papers were not on file in his office, but were mislaid.

94 That the said Hartman, Attorney for the said Work, also caused a search to be made for said papers in said Clerk's office by other persons, and that the said papers were not to be found in said Clerk's office. That thereafter, in the month of September, 1906, the said papers in said cause were found by said Clerk and a transcript on appeal sent up to the Supreme Court of the Territory. That the said Joseph Campbell, deceased, during his lifetime and as attorney for the said Work, had in his possession a large number of documents belonging to the said Work pertaining to the said cause, which documents it was necessary for the said Hartman as Attorney for the said Work to have for preparing the case for appeal and for the purpose of making briefs. That diligent efforts were made to obtain said papers and documents, but that owing to the death of the said Joseph Campbell it was impossible to procure the same. That the said Hartman as Attorney for the said Work, proceeded with all due diligence to have the abstract of the record and briefs in said case prepared and printed in accordance with the rules of the Supreme Court, but the said printer was unable to furnish the printed copies of the abstract of the record and briefs in time to be filed in the Supreme Court, before the beginning of the January 1907 term thereof.

That on January 15th, 1907, this Court made and entered its order in the said cause of James H. Work, appellant, vs. The United Globe Mines, appellee, that the cause be submitted on briefs.

On January 18th, 1907, this Court made an order on its own motion that the cause be dismissed for want of prosecution.

95 On March 14th, 1907, James H. Work filed in said cause his motion to reinstate the appeal, on the ground that the delay in filing abstracts and briefs, were due to causes beyond his control and which motion was supported by affidavits.

On March 22nd, 1907, this Court denied the motion to reinstate the appeal.

On March 23rd, 1907, appellant Work filed his motion for re-hearing of the motion to reinstate the appeal, and on March 24th, 1907, this Court ordered that the motion for re-hearing of the motion to reinstate the appeal be denied.

That on the 14th day of February, 1907, the said James H. Work filed in the District Court of Gila County, Arizona, his petition for writ of error to review the said judgment.

That on the 14th day of February, 1907, the said writ of error was granted by said Court, and summons issued thereon; and on the same day, February 14th, 1907, the summons in error, with copy of the petition was duly served upon The United Globe Mines

Transcripts of the record and all the papers in the said cause were thereafter filed in the Supreme Court in due time.

On March 22nd, 1907, plaintiff in error, James H. Work, filed in the Supreme Court six copies of his brief.

On the — day of November, 1907, The United Globe Mines defendant in error herein, filed its motion herein to dismiss the writ of error on the following grounds:

1. That the appeal heretofore taken by the said James H.

96 Work in the said case had been dismissed by the Supreme Court for want of prosecution.

2. That the said James H. Work still pursued his remedy by appeal after suing out the writ of error.

3. That every fact essential to support the judgment of the Trial Court, in favor of The United Globe Mines, defendant below, is expressly admitted in the agreed statement of facts upon which the parties submitted the matter in controversy between them to the Trial Court.

4. That no ground of review by writ of error exists.

5. That the sole and manifest purpose of said James H. Work in prosecuting this writ of error is delay.

The United Globe Mines in its motion to dismiss the writ of error herein appeared generally and did not appear specially for the sole and only purpose of moving to dismiss the writ of error.

That during the session of the Supreme Court of the Territory of Arizona, in January, 1907, at which time the said Court, on its own motion ordered the cause on appeal to be submitted on briefs, to-wit January 15th, 1907; and thereafter, on January 18th, 1907, ordered the cause on appeal to be dismissed for want of prosecution.

Counsel for the said James H. Work, Francis M. Hartman, Esq., was unable to attend at said Court at Phœnix, by reason of illness, being confined to his home in Tucson, Arizona for about two weeks during said time.

That the writ of error in this action is not being prose-
97 cuted by the said James H. Work for delay, but for the pur-
pose of obtaining a review of the said judgment of the said District Court by this Court.

That the subject matter of this action is the title and ownership of the certain mines heretofore described; that the said James H. Work acquired title to the said mines on February 10th, 1886, by virtue of a deed duly executed in pursuance to a foreclosure of his mortgage heretofore referred to.

That thereafter, The United Globe Mines, a foreign corporation, without the knowledge or consent of the said James H. Work, and without any right whatsoever, wrongfully and illegally entered in and upon the said mines and took possession of the same and extracted therefrom large quantities of valuable ore, and appropriated the same to its own use and benefit; and thereafter procured a deed made by the Board of Supervisors of Gila County, Arizona, purporting to convey to D. Willis James and Wm. E. Dodge, the said mines, and procured the said D. Willis James and Wm. E. Dodge to make a deed to it, the said The United Globe Mines, purporting to convey to it, the said The United Globe Mines, the said mines, which said deed from the Board of Supervisors to the said James and Dodge, respondent is advised and informed was of no force and effect whatsoever and absolutely void on its face.

That the deed from D. Willis James and Wm. E. Dodge to The United Globe Mines, purporting to convey the said mines was of no
force and effect whatsoever as to the Big Johnny and
98 O'Doughtery mines, for the reason that the said James and Dodge did not own the said mines.

That in the suit brought in the District Court by the said James H. Work, in which the United Globe Mines filed its answer in July, 1905, the said The United Globe Mines, a foreign corporation, claimed title to the said mines by reason of having been in possession of the same for five years under the deed from Dodge and James; and also claimed title to the mines by reason of having been in possession of the same for more than ten years.

The deed above referred to from the Board of Supervisors of the County of Gila, Territory of Arizona, to James and Dodge is in the following words and figures, to-wit

"This indenture, made the fifteenth day of December, in the year of our Lord one thousand eight hundred and ninety between the Board of Supervisors of the County of Gila, Territory of Arizona, the party of the first part and D. W. James and W. E. Dodge of New York City, N. Y., the party of the second part.

Witnesseth; that

Whereas, B. F. Pascoe, Sheriff and ex-officio Tax Collector of said County, did by virtue of the provisions of an Act of the Legislature of Arizona, entitled, "An Act Amendatory to Chapter XXXIII of Compiled Laws of Arizona Territory, to provide revenue for the Territory of Arizona and the several counties thereof, approved April 12, 1875," approved March 10, 1881, as such Tax Collector, hereto-

fore and at the time hereinafter mentioned, to-wit: On the third Monday of December, 1883, at the close of his official business on that day, enter upon the duplicate assessment roll a statement that he had made a levy upon all property therein assessed, the taxes upon which had not been paid, and did immediately ascertain the total amount of taxes then delinquent and file in the office of the Treasurer of said County, a statement of said amount verified by him, and did make out a list of all persons and property when owing taxes in said County to the Territory of Arizona and to the County of Gila; together with the costs and charges thereon and which said list was duly verified by him, and was completed on the last day of December, 1883, and did include the property first hereinafter described.

That said property was assessed for the fiscal year commencing on the first Monday in March, 1883, for Territorial and County Taxes as follows: Work, Jas. H. Mortgage on O'Dougherty and Big Johnny Copper Mines, Globe Mining District, $25,000 Tax $725.00 per cent added $36.25, fees $45.67, penalty $1.00 $807.92 being liable for $807.92, the amount of taxes and costs due on the said third Monday of December, 1883, was on the 10th day of March, 1884, in accordance with law, offered for sale to pay said taxes and costs, at public auction, in front of the sheriff's office (there being no court house) in said county; that on the day said property was first offered for sale at said auction, there was no bidder therefor, and at a subsequent day of auction, to-wit: on the 12th day of March, 1884, said property was again offered for sale for said taxes and costs, and there being still no bidder or purchaser therefor, the same, and the whole thereof, was by the said B. F. Pascoe, Sheriff and ex-officio Tax Collector as aforesaid struck off to the Territory of Arizona, as the purchaser, pursuant to law, and the said Territory became the purchaser of said described piece or parcel of land so sold as aforesaid for said taxes and costs, and that said real estate was sold subject to redemption, pursuant to the Statute in such cases made and provided, and that unless redeemed within six months from date of purchase, said purchaser would be entitled to a deed at the expiration of six months from date of sale.

Whereupon the said Sheriff and Ex-Officio Tax Collector delivered to the Treasurer of said County a certificate of said sale as is by law directed to be given, and a duplicate of such certificate was duly filed by the said Sheriff and ex-officio Tax Collector, in the office of the Recorder of said County of Gila.

And Whereas, six months after said sale had expired, without any redemption of said premises having been made, and

Whereas, G. S. Van Wagenen, Treasurer and Ex-Officio Tax Collector of said County, by virtue of and in pursuance of the Statutes in such cases made and provided, for and in consideration of the premises and the sum of money to said G. S. Van Wagenen, Treasurer and Ex-officio Tax Collector credited pursuant to law did on the 10th day of December, 1885, bargain, sell, convey and confirm unto the said Territory of Arizona and to its successors and assigns forever, all the right, title, interest and claim which the said

Jas. H. Work had on the said 1st Monday of March, 1883,
101 in and to all that certain mining property, situate, lying and being in the County of Gila, Territory of Arizona, as hereinbefore particularly described, and

Whereas, the Board of Supervisors of the County of Gila, Territory of Arizona, did on or before the first Monday in November, A. D. 1886, prepare a list of all the real estate held by the Territory of Arizona, by tax deed, including the property, hereinbefore and hereinafter described, and situated in the County of Gila, giving a full and intelligent description of each parcel of said real estate so held by said Territory of Arizona, together with the name of the former owner thereof, when known, and the total amount of the taxes, penalties and costs, including the unpaid charges of the Collector and Recorder, for which said deed from said Tax Collector was given to each of said several tracts of real estates, and did advertise all of said several tracts of real estate for sale at private sale, at the office of the Board of Supervisors, by publication of said list according to law, and did also advertise the same by posting said list in two or more public places in each election precinct wherein any of said real estate is situated, and by keeping such notice and list so continuously posted in the Supervisors' office and Sheriff's office of said county, and also at the front door of the house last used for a court house.

Now therefore this indenture witnesseth, that said Board of Supervisors of said county of Gila has by virtue of the power in them vested by the Statute in such cases made and provided, for
102 and in consideration of the sum of $1,365.49 lawful money of the United States in hand paid by said D. W. James and W. E. Dodge the receipt whereof is hereby acknowledged, bargained, sold, conveyed and confirmed, and by these presents does grant, bargain, sell, convey and confirm unto the said D. W. James and W. E. Dodge and to their heirs and assigns forever, all the right, title, interest and claim which the said Territory of Arizona has or ever had in and to all of that lot, piece or parcel of Land situate, lying and being in the said County of Gila, Territory of Arizona, hereinbefore described, which said premises are particularly described as follows to-wit: The O'Dougherty and Big Johnny Mines, situate in Globe Mining District, County and Territory aforesaid, and about three miles northerly of the town of Globe in said County of Gila.

Together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining.

To have and to hold the said premises with the appurtenances unto the said parties of the second part, their heirs and assigns forever.

In witness whereof, the Board of Supervisors of the County of Gila, Territory of Arizona, has caused this deed of conveyance to be made, executed and delivered by its Chairman and Clerk under the Official Seal of said Board of Supervisors of said County, as required by law.

[SUPERVISOR'S SEAL.] PATRICK SHANLEY,
Chairman Board of Supervisors.
103 CHAS. T. MARTIN,
Clerk Board of Supervisors.

Signed, Sealed and Delivered in the presence of
J. D. McCABE.

TERRITORY OF ARIZONA,
County of Gila, ss:

Before me, J. D. McCabe, a Notary Public of the Territory of Arizona, in and for Gila County, personally appeared Patrick Shanley, Chairman of the Board of Supervisors of said Gila County, Arizona Territory, and Chas. T. Martin, Clerk of said Board of Supervisors of Gila County, known to me to be the persons whose names are subscribed as such Chairman and Clerk respectively, to the foregoing instrument, and each acknowledged to me severally that he executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office this 15th day of December, 1890.

[NOTAR'S SEAL.]

J. D. McCABE,
Notary Public, Gila County, A. T.

Filed and recorded at request of J. D. McCabe at 30 minutes past 11 o'clock A. M., January 2nd, 1891.

CHAS. T. MARTIN,
County Recorder.

The deed from James and Dodge to the United Globe Mines above referred to is an ordinary bargain sale deed and purports to convey a large number of mines and mining claims, including the
104 property in question.

That the said James H. Work by the prosecution of this writ of error is not delaying the enforcement of the judgment obtained by the said United Globe Mines.

That in the appeal heretofore taken no supersedeas bond was given by the said James H. Work to stay the said judgment, but only a cost bond on appeal was given.

That in this writ of error, the said James H. Work has not given a supersedeas bond to stay the judgment, but has only given a bond in error for cost.

That the said, The United Globe Mines is now and ever since the rendition of said judgment has been in the possession of said mines, working and operating the same and extracting large quantities of valuable ore therefrom and appropriating the same to its own use.

That the said James H. Work, in prosecuting this proceeding in writ of error, is only endeavoring to recover his own property from the United Globe Mines, under the just belief that he is the rightful owner of said property, and that the said The United Globe Mines wrongfully and illegally appropriated said property to its own use.

That the said James H. Work desires a review of said judgment, and the points raised by assignment of errors in the brief heretofore filed herein, are as follows:

1. That the answer of the defendant below does not state
105 facts sufficient to constitute a defense.

2. That Defendant's answer does not state facts sufficient

to constitute a defense to the cause of action set up in plaintiff's complaint.

3. That defendant's answer does not state facts sufficient to constitute a cause of action to entitle defendant to the affirmative relief prayed for; and does not state facts sufficient to constitute a good plea of the statute of limitations, or a plea of the bar of the statute of limitations, for the following reasons:

(*a*) Does not properly describe the land and mines in question.

(*b*) Does not allege that defendant did not deraign title through a forged deed.

(*c*) Does not allege that it is not claiming under a forged deed.

(*d*) Does not allege that at the time the title descended to defendant, or at the time defendant's adverse possession commenced, plaintiff was not under the age of 21 years; or was not of unsound mind, or was not during any such times imprisoned.

(*e*) Does not allege that the defendant, a foreign corporation, had a regularly appointed agent in the Territory of Arizona; or had a domicile or place of business in the Territory, during all the times mentioned.

(*f*) Does not allege notice to the plaintiff.

106 (*g*) Does not allege that the defendant relies on the statute of limitations of the Territory of Arizona.

(*h*) Does not plead the statute of limitations of the Territory of Arizona.

(*i*) Does not allege that plaintiff, the true owner of the land in question with intent to claim against the plaintiff, the true owner thereof.

(*j*) Does not allege that plaintiff, the true owner of the land in question, had actual knowledge of the alleged adverse claim and possession of defendant.

(*k*) Does not allege that the adverse possession of defendant was not obtained by the assent of plaintiff.

(*l*) Does not allege that the defendant corporation was authorized or empowered by its charter, or authorized to obtain title to real estate by adverse possession, or to plead or avail itself of the statute of limitations.

(*m*) That defendant's answer and plea of statute of limitations attempted to be set up therein, alleges conclusions of law.

4. That the defendant, being a foreign corporation, cannot avail itself of, or set up the plea of the statute of limitations.

5. That plaintiff being a non-resident of the Territory of Arizona, the statute of limitations of this Territory did not run against him.

107 6. That the Court did not make and file findings of fact and conclusions of law, as required by par. 1406, Rev. St. Arizona, 1901.

7. That the Court did not find that plaintiff's cause of action was barred.

8. That the evidence does not sustain the judgment.

9. That the judgment is contrary to the evidence.

10. That the judgment is contrary to the law.

11. That the judgment is not supported by the pleadings; and that the defendant's answer is insufficient to support the judgment rendered in favor of defendant.

That the said writ of error herein was sued out by the said James H. Work with the utmost good faith, and to protect his rights, and for the purpose of obtaining a review by this Court of the said judgment of the District Court.

That the said judgment should be reviewed and reversed, for the reason that the said The United Globe Mines, a foreign corporation, could not avail itself of the plea of the statute of limitations of the Territory of Arizona, and for the many other reasons above set forth.

That written briefs and arguments on behalf of both plaintiff and defendant were filed in the District Court of Gila County, when the said cause was submitted before said Trial Court, which briefs
108 respondent is informed and believes were among the papers sent by the Clerk of the said District Court to the Supreme Court of the Territory of Arizona, and were among the files of said cause when the said appeal was dismissed by this Court for want of prosecution.

That the United Globe Mines did not appear in this Court in the case on appeal before the same was dismissed by this Court for want of prosecution, and did not make application to this Court as provided by law for an affirmance of the judgment of the Lower Court on what is termed a short transcript; and that the said judgment of the Lower Court was not affirmed by this Court, and that the said The United Globe Mines has not appeared in this proceeding and made application to this Court for an affirmance of the judgment of the Lower Court, as provided by law.

That in support of this answer to the motion of defendant in error to dismiss this writ of error, respondent James H. Work begs leave to submit to your Honorable Court the affidavits of the said James H. Work and Francis M. Hartman, and also the certificate of Dr. C. A. Schrader, hereto attached.

Wherefore, the said James H. Work prays that the motion of The United Globe Mines to dismiss this writ of error be denied, and that he be allowed his right to have the said judgment reviewed by this Court.

109

FRANCIS M. HARTMAN,
Attorney for Plaintiff in Error,
James H. Work.

In the Supreme Court of the Territory of Arizona

JAMES H. WORK, Plaintiff in Error,
vs.
THE UNITED GLOBE MINES, a Corporation, Defendant in Error.

Affidavit of Francis M. Hartman.

TERRITORY OF ARIZONA,
County of Pima, ss:

Francis M. Hartman being first duly sworn, deposes and says: that he is an Attorney at Law residing at Tucson, Pima County, Arizona; that in the latter part of August, 1906, he was employed by James H. Work, Esq. of New York City, New York, in the case of the said James H. Work vs. The United Globe Mines; that a judgment had been rendered in said cause in the District Court of Gila County, Arizona, on February 26th, 1906; that Joseph Campbell, Esq., of Globe, Arizona, was the Attorney for the said Work in said Lower Court; that before the said judgment was rendered on February 26th, 1906, the said Joseph Campbell, the said Attorney for the said James H. Work, departed this life, and that the said James H.
110 Work was without any Attorney to represent him in said matter in the Territory of Arizona; that the said James H. Work arranged by telegraph for George J. Stoneman, Esq., an Attorney at Law residing at Globe, Arizona, for the filing of a motion for new trial and bond on appeal.

And affiant is informed and believes that the said George J. Stoneman, Esq. obtained from the Attorneys of The United Globe Mines, to-wit: Messrs. Herring & Sorin of Tucson, Arizona, an extension of time for the said James H. Work to prepare the said case on appeal.

That immediately upon affiant being employed in said case in August, 1906, he took steps at once to perfect said appeal, but that he was informed by the said District Court that the papers could not be found in his office; that afterwards he was informed by the Clerk of the said District Court that the papers had been found, and a transcript was thereafter made up and sent to the Supreme Court; that on account of the long distance of the place of residence of affiant, and the place where the said cause was tried, to-wit: Globe, Arizona, and where all the papers were on file, a long delay was necessarily incurred in obtaining copies of all papers for making up an Abstract of the Record and Briefs.

That the said Joseph Campbell, deceased, had in his possession during his lifetime a great many important papers and documents
111 relating to the said cause and belonging to the said Work, which papers and documents affiant was advised and believed were necessary to have in preparing the case for appeal and for preparing briefs; but on account of the said Joseph Campbell having died in the State of California, away from his home, it was impossible to obtain such documents and papers, and considerable time was consumed in endeavoring to procure the same.

That a long delay was caused in printing the Abstract of the Record and Briefs by the printer at Tucson, Arizona, to whom the record was delivered for printing.

That affiant, as Attorney for the said James H. Work, proceeded with all due diligence to get the Abstract of the Record and Briefs ready to file before the beginning of the January 1907 term of the Supreme Court of the Territory of Arizona, but that it was impossible to do so; that affiant became ill at about the time of the beginning of the January 1907 term of the Supreme Court and was confined to his home in Tucson for about two weeks during the 1907 session of said Court, and was not advised of and had no notice of the orders made and entered by the said Supreme Court on January 15th and 18th, 1907, submitting said cause on briefs and dismissing the same for want of prosecution, until some time after the adjournment of said term.

That affiant is informed and believes that both the plaintiff and defendant filed written briefs and arguments in said cause in
112 the Trial Court, and that said briefs and arguments were among the files of said cause in the Supreme Court of the Territory of Arizona, when this Court made its order on January 18th, 1907, dismissing the said appeal for want of prosecution.

That the writ of error herein was sued out in the utmost good faith and no intention whatever to delay The United Globe Mines in the enforcement of its judgment rendered by the Court below.

That the writ of error herein was sued out by the said James H. Work in the month of February, 1906, for the reason that the year within which such writ may be sued out, was about to expire, and said writ was sued out to protect the rights of the said James H. Work, and to procure a review by this Court of the said judgment.

That the subject matter of this suit is the title and ownership to two certain mines situated in Gila County, Arizona.

That the said, The United Globe Mines, a foreign corporation, some time in 1893 wrongfully and unlawfully took possession and appropriated the said mines, and *have* ever since worked and operated the same, extracting large quantities of ore therefrom and appropriating the same to its own use and benefit, and is now working and operating the same and extracting valuable ores therefrom and appropriating the same to its own use; and that this writ of error does not in any way interfere with the rights of the said
113 The United Globe Mines.

That the said James H. Work did not abandon his remedy by appeal in said cause, but that the said appeal was dismissed by this Court on its own motion for want of prosecution, and that this writ of error was sued out as soon thereafter as possible, and before one year after the rendition of the judgment.

FRANCIS M. HARTMAN.

Subscribed and sworn to before me this 7th day of December, 1907.

[SEAL.] W. H. MUELLER,
Notary Public in and for County of Pima, Territory of Arizona.

My Commission expires March 19, 1911.

114 In the Supreme Court of the Territory of Arizona.

JAMES H. WORK, Plaintiff in Error,
vs.
THE UNITED GLOBE MINES, a Corporation, Defendant in Error.

I, C. A. Schrader, do hereby certify that I am a practicing physician residing at the City of Tucson, Arizona, and have been for several years last past; that from about January 10th, 1907, to about January 25th, 1907; I treated Francis M. Hartman at his home in Tucson, Arizona; that the said Hartman was during nearly all of said time confined to his home at said place, by illness, and was not able physically to leave the same.

Dated Tucson, Arizona, December 6, 1907.

C. A. SCHRADER, M. D.

115 In the Supreme Court of the Territory of Arizona.

JAMES H. WORK, Appellant,
vs.
THE UNITED GLOBE MINES, Appellee.

STATE OF NEW YORK,
County of New York, ss:

James Henry Work, being duly sworn, deposes and says:

That he is the plaintiff in the above entitled action; that he has read the affidavit of George J. Stoneman sworn to on the 15th day of March, 1907, and used by the attorneys for the defendant herein in opposing plaintiff's motion to reinstate his appeal in this case.

Deponent further says that on the 20th day of February, 1906, he received a letter from the Clerk of the District Court, of Globe District, Arizona, advising deponent that judgment had been entered in this action in favor of the defendant; that deponent's attorney had died since the judgment and that if dependent desired to protect his right to appeal or take any other action with reference to such judgment, he would have to do so before February 25th; that this deponent had at that time no counsel or representative in Arizona; that deponent telegraphed George J. Stoneman, Globe, Arizona, as follows: "See Martin, Clerk District Court. Take
116 necessary steps to preserve right to appeal. Answer paid:" deponent also telegraphed the Clerk of the District Court, acknowledging his letter of February 15th, and referring to deponent's telegram to the said Stoneman; that on February 23rd, deponent received and paid for a telegram sent by said George J. Stoneman, advising deponent that he had made a motion for a new trial and had written deponent; that on February 27th, deponent received a letter from said Stoneman, dated February 21st, acknowledging receipt of deponent's telegram, enclosing copy of motion for new trial and giving some extracts from briefs of counsel filed

in this case; that on February 28th, deponent received and paid for a telegram from said Stoneman, saying, "Record on Appeal all right. Letter mailed to-day;" that on the 4th or 5th day of March, deponent received a letter from said Stoneman, dated February 27th, reporting formal vacating and re-entering of judgment and requesting plaintiff to forward appeal bond; that on the following day, deponent received a letter from said Stoneman, enclosing form of Appeal Bond and advising deponent that the Court had granted sixty days thereafter within which to perfect his appeal; that on the 6th day of March, deponent wrote said Stoneman, acknowledging receipt of his letters of February 27th and March 1st and advising him that the American Surety Company would forward Bond and asking Stoneman to forward deponent an estimate of expense
117 of preparing the Appeal; that on or about the 20th day of March, deponent received a letter from said Stoneman, dated March 13th, acknowledging receipt of deponent's letter of March 6th and of the Appeal Bond furnished by deponent and in which said letter, instead of advising deponent of expenses necessary for disbursements and services in perfecting the Appeal, he suggested the employment of said Stoneman by a cash payment of Five Hundred ($500.) Dollars and an agreement to give him one-third of the recovery had in any future litigation and saying, "Have fixed this amount as sufficient probably to cover my expenses;" that on or about the first day of April, deponent received a letter from said Stoneman, dated March 24th, enclosing copy of defendant's brief and saying that he was having the copy of the record prepared in his office, because there was none too much time to enable plaintiff to examine the case and make decision as to what he wished to do and explaining that he had not completed the work or progressed as far as deponent might expect on account of the pressure of other work in his office; that shortly afterward, deponent received from said Stoneman copies making up the greater portion of the record, including an agreed statement of facts, which this deponent had never previously seen and with reference to the making of which, he had never been at any time advised by counsel; that from the beginning of this correspondence and during this correspondence, this deponent had never had any doubt or question in his
118 mind and had not intended to convey any doubt or question as to his intention to perfect his appeal and preserve his right to argue such appeal, if he subsequently concluded that it was expedient to do so; that the only doubt that existed in deponent's mind was as to the ultimate prosecution of said Appeal in the event of his being advised by counsel whom he might employ for such purpose that the further prosecution of such appeal was not advisable; that on the 13th of April, deponent wrote to said Stoneman, saying among other things, "I believe that I am right in supposing that you have copies of papers making up the Appeal Book or Record of the Appeal all ready for filing and that this much labor and expense has already been incurred. If so, is it not better in any event to file these papers within the necessary time and afterward exchange our views as to the legal situation and prospects. I sup-

pose we can take time to consider the situation after the Appeal has been perfected. If you need any quick decision or action on my part, wire me at once on receipt of this:" that it appears that on receipt of this letter, said Stoneman became apprehensive as to his future employment in the conduct of the case and thereupon wired to this deponent, with a view to compelling him to immediately decide that he would employ him upon the terms which he had suggested, as follows: "Time for filing in Supreme Court expires 26th. Wire immediately your instructions based on my proposal as to compensation."

119 This deponent further says, that he was unwilling to decide forthwith as to the future conduct of his appeal or as to the terms he was prepared to make for future employment and supposing, of course, that all that said Stoneman required at that time was enough money to pay for the expense of preparing and printing the Appeal and for his services to that date, he telegraphed said Stoneman as follows: "Will wire money for services perfecting appeal record if desired but wish to exchange explanations and consider case with you before determining what to do. Is this satisfactory?" That deponent expected thereupon to receive by telegraph a statement of the amount desired by said Stoneman for the purposes stated and thereafter to correspond with him as to the details of the agreement to be entered into for the future conduct of the case; that there were many things necessary in deponent's judgment to be considered before entering blindly upon an agreement which might be an embarrassment and cause misunderstanding between the parties to it; that it appears that said Stoneman, on receiving this telegram preferred to have the time for perfecting the Appeal extended, rather than to have it completed and paid for at that time and that he accordingly thereupon sent to deponent a telegram saying that he had wired for extension of time to Col. William Herring, the senior member of the firm of attorneys for defendant: that on or about the 25th or 26th day of April, deponent

120 received a letter from said Stoneman, dated April, 18th, saying, among other things, "I have no wish to proceed further, unless my proposition to you is accepted or some other arrangement satisfactory to myself is entered into:" that this letter, as appears from its date was written prior to the sending and receipt of deponent's telegram, authorizing said Stoneman to call upon deponent for all the money necessary for his services and disbursements in connection with the perfecting of the Appeal; that on or about the first day of May, deponent received from said Stoneman another letter dated April 27th, in which, referring to the fact that deponent had not decided what he would do as to the future conduct of the case he distinctly said that he would, "as soon as the Clerk returns," "order the transcript of the Record and place it in the hands of the printer so that the Abstract might be prepared" and after enumerating the papers of which the Abstract would consist, added, "When I find what the cost of printing will be, I will send you the bill and you can reimburse me:" that this deponent, therefore, distinctly understood that said Stoneman, in view of deponent's

telegram, was merely waiting to ascertain what the necessary outlay would be in perfecting the Appeal, before requesting this deponent to forward the money; that on the 5th day of May, this deponent again wrote to said Stoneman, saying, among other things, "I have your letter of April 27th. You are quite right in going ahead with the printing and I will have to lose this much money if we
121 do not go on with the Appeal. I have very little doubt, however, that it is best to do so;" that deponent then proceeded in such letter to further discuss the terms of his proposed future employment of said Stoneman in the event of deponent employing counsel to go on in arguing the case, and mentioning some details which he thought should be embodied in any agreement with reference thereto; that this deponent relied entirely upon his understanding of the situation, as above stated, and supposed that the record had been completed, printed and filed until in the month of June and on or about the 30th day of June or the beginning of July, he received from said Stoneman a letter dated June 19th, from the general character of which, deponent become convinced that the said Stoneman did not intend to allow this deponent to have his appeal perfected unless, at the same time, deponent agreed to employ the said Stoneman in the future conduct of the case and in the argument of his Appeal; that in such letter, at the same time, said Stoneman assured this deponent that the defendant's attorneys had stated that this deponent could have all the time in reason if he desired to go on with this Appeal, provided that they were once assured that he intended to prosecute the same in good faith.

This deponent further says, that he had no correspondent with whom he had personal acquaintance at this time in the Territory of Arizona and that much time was consumed in ascertain-
122 ing in whose hands he might place the future case of his interests and that relying upon what he understood to be the statement of the said Stoneman that there would be no trouble about extensions of time for perfecting the Appeal and also believing that in the event of any difficulty upon this point, said Stoneman would certainly, as it was his duty to do, at once draw for whatever money might be necessary for that particular purpose and file and serve the papers on appeal; that deponent having, thereafter ascertained by correspondence and inquiry that he could, to his advantage, avail himself of the services of Mr. Francis M. Hartman, of Tucson, Arizona, wrote to said Hartman, advising him that he wished to employ him in caring for his interests with reference to the property, the title to which is the subject of this litigation and asking him to ascertain first, if the Appeal had been perfected and if not, what remained to be done and asking him to call upon the defendant's attorney and if further time was required for the perfecting of the Appeal herein, to have a definite understanding with them on this subject and to report fully to this deponent.

Deponent further says that he has read those portions of the affidavit of George J. Stoneman, which refer to the extension of time granted by defendant's attorneys; that he believes it to be true that

time was granted by defendant's attorneys and assurance given
123 by them to said Stoneman that the plaintiff should have such time as he might need to perfect his Appeal, provided such extensions were asked for in good faith and followed by the perfection of the Appeal and this deponent is unable to understand how said Stoneman or said defendant's attorneys can now claim that such extension of time and assurances were given to said Stoneman as distinguished from the plaintiff to be used by said Stoneman or not as he might elect for his own personal benefit and not for the benefit of the plaintiff.

Deponent further says that the property, the title to which is the subject of this action, is of large value and that deponent's original investment therein and cost of development and subsequent outlay amounted to a very large sum of money in actual cash; that deponent has never had the least idea of abandoning same or allowing the same to be possessed, occupied or enjoyed by anyone adversely to himself.

JAMES HENRY WORK.

Sworn to before me this 14th day of June, 1907.
[SEAL.] CLINTON DE FOREST GANSE.
Notary Public, New York County.

124 And on to-wit: the fourteenth day of January, 1908, being one of the regular juridical days of the January term of said court, 1908, the following order, inter alia, was had and entered of record in said cause, in words and figures following, to-wit

Title of Cause.

It is ordered that the Motion to Dismiss Writ of Error, filed herein by Defendant in Error, be submitted.

And on the same day to-wit: the fourteenth day of January, 1908, being one of the regular juridical days of the January term of said court, 1908, the following order and Judgment, inter alia, was had and entered of record in said cause, in words and figures following, to-wit:

No. 1009.

JAMES H. WORK, Plaintiff in Error,
vs.
THE UNITED GLOBE MINES, a Corporation, Defendant in Error.

The Motion to Dismiss the Writ of Error, filed herein by Defendant in Error, having been heretofore submitted, and by the Court taken under advisement, and the Court having considered the same and being fully advised in the premises:

It is ordered that said motion be granted and the Writ of Error be, and the same is, hereby dismissed.

125 It is further ordered, adjudged and decreed, that the Defendant in Error herein, do have and recover of and from James H. Work, Plaintiff in Error herein and The American Surety Company of New York, a corporation, surety on Bond on Writ of Error, its costs in this court, taxed at — Dollars, together with its costs in the court below in this cause incurred.

And on to-wit: the twenty-eighth day of January, 1908, came the Plaintiff in Error by his attorney, and filed in the clerk's office of said court in said entitled cause his certain Petition for Rehearing and Application *to* Oral Argument, in words and figures following, to-wit:

In the Supreme Court of the Territory of Arizona.

JAMES H. WORK, Plaintiff in Error,
vs.
THE UNITED GLOBE MINES, a Corporation, Defendant in Error.

Plaintiff in Error's Petition for Rehearing.

Now comes James H. Work, plaintiff in error, in the above entitled action, and moves the court to grant him a rehearing in said cause, and set aside and vacate the order heretofore made
126 herein, on January 11th, 1908, by this court, dismissing the Writ of Error herein, and entering judgment against Plaintiff in Error, James H. Work, and the American Surety Company, surety on the Bond on Writ of Error, for the costs in this court and the costs in the court below, for the following reasons:

That the Appeal heretofore taken by the said James H. Work in said cause, and dismissed by this court on its own motion, on January 18th, 1907, is not a bar to the writ of error herein.

That no judgment for costs should have been entered against Plaintiff in Error, because he has endeavored to prosecute his Writ of Error with effect.

That this court erred in holding that the appeal heretofore taken by said James H. Work, in said cause, and dismissed by this court, on its own motion, on January 18th, 1907, was a bar to this writ of error herein.

That the Defendant in Error herein, The United Globe Mines, in its motion to dismiss said writ of error, appeared generally, and did not limit its appearance in said cause for the sole and only purpose of moving to dismiss said writ of error.

Because the writ of error herein was not sued out for purposes of delay, but for the purpose of having the judgment of the district court reviewed by this court.

That the statutes of the Territory of Arizona gives a liti-
127 gant the right to have his cause reviewed by the Supreme Court by writ of error, if sued out within one year from the rendition of the judgment below, irrespective of the dismissal by the Supreme Court on its own motion, of a former appeal of said cause.

That the statutes of the Territory of Arizona in reference to Appeals and Writs of Error were adopted from the Laws of the State of Texas; that the courts of last resort of the State of Texas have construed said statutes to the effect that the dismissal by the Appellate Court of an Appeal is not a bar to a Writ of Error; and that the Legislature of this Territory in adopting said statutes also adopted such construction so placed upon said statutes by the courts of last resort of the said State of Texas, and the courts of this Territory are bound by such construction.

Because the Defendant in Error herein, The United Globe Mines, did not make application in the Appeal heretofore taken in said cause by the said James H. Work, to have this Court affirm the judgment of the district court, on short transcript, as provided by the laws of this Territory.

Wherefore, Plaintiff in Error, James H. Work, prays that a rehearing be granted of Defendant in Error's Motion to Dismiss said Writ of Error; that the order and judgment above referred to be set aside and vacated, and that said cause be considered and
128 reviewed on its merits, and for further and general relief as to this court may seem just and equitable.

FRANCIS M. HARTMAN,
Attorney for James H. Work, Plaintiff in Error.

In the Supreme Court of the Territory of Arizona.

JAMES H. WORK, Plaintiff in Error,
vs.
THE UNITED GLOBE MINES, a Corporation, Defendant in Error.

Application for Oral Argument of Petition for Rehearing.

Now comes the Plaintiff in Error, James H. Work, and makes application to this Honorable Court, for an oral argument of the foregoing Petition for Rehearing.

FRANCIS M. HARTMAN,
Attorney for Plaintiff in Error James H. Work.

And on to-wit: the twenty-third day of March, 1908, being one of the regular juridical days of the January term of said court, 1908, the following order, inter alia, was had and entered of record in said cause, in words and figures following, to-wit:

129 Title of Cause.

It is ordered that the Motion for Rehearing and Oral Argument, filed herein by Plaintiff in Error, be submitted.

And on to-wit: the twenty-seventh day of March, 1908, being one of the regular juridical days of the January term of said court, 1908, the following order, inter alia, was had and entered of record in said cause, in words and figures following, to-wit:

Title of Cause.

The Petition for Rehearing and Application for oral argument of the Petition for Rehearing, filed herein by Plaintiff in Error, having been heretofore submitted and by the Court taken under advisement, and the Court having considered the same and being fully advised in the premises:

It is ordered that said Application be granted and oral argument be heard in May.

And on to-wit: the eighteenth day of May, 1908, being one of the regular juridical days of the January term of said court, 1908, the following order, inter alia, was had and entered of record in said cause, in words and figures following, to-wit:

130 Title of Cause.

The motion for rehearing coming on at this time for hearing was argued by Mr. Francis M. Hartman for Plaintiff in Error, and Mrs. Sorin for Defendant in Error, and ordered submitted.

And on to-wit: the nineteenth day of May, 1908, being one of the regular juridical days of the January term of said court, 1908, the following order, inter alia, was had and entered of record in said cause, in words and figures following, to-wit:

Title of Cause.

In this cause it is ordered that the Motion for Rehearing filed herein and heretofore submitted, be continued for disposition until the next session of this court.

And on the same day to-wit: the nineteenth day of May, 1908, being one of the regular juridical days of the January term of said court, 1908, the following other order was had and entered of record in said cause in words and figures following, to-wit:

Title of Cause.

On motion of Francis M. Hartman, Esq., it is ordered that Plaintiff in Error herein be granted 20 days within which
131 to file additional brief.

It is further ordered that Defendant in Error herein be granted 20 days thereafter within which to file reply brief.

And on to-wit: the twelfth day of November, 1908, being one of the regular juridical days of the January term of said court, 1908, the following order, inter alia, was had and entered of record in said cause, in words and figures following, to-wit:

Title of Cause.

At this day it is ordered by the Court that the Motion of Plaintiff in Error herein for a rehearing and that the order and judgment entered herein on the 14th of January, 1908, dismissing the Writ of Error, be set aside and vacated, and that said cause be considered and reviewed on its merits, be and the same is hereby granted, and cause set for hearing at the January Term, 1909.

And on the same day to-wit: the twelfth day of November, 1908, being one of the regular juridical days of the January term of said court, 1908, the following other order was had and entered of record in said cause in words and figures following, to-wit:

132 Title of Cause.

At this day, on motion of attorney for Defendant in Error, it is ordered by the Court that the Defendant in Error be granted thirty days within which to file printed brief.

And on the same day to-wit: the twelfth day of November, 1908, being one of the regular juridical days of the January term of said court, 1908, the following other order was had and entered of record in said cause in words and figures following, to-wit:

Title of Cause.

At this day, on motion of attorney for Plaintiff in Error, it is ordered by the Court that the Plaintiff in Error be granted twenty days within which to file brief.

And on to-wit: the twelfth day of January, 1909, being one of the regular juridical days of the January term of said court, 1909, the following order, inter alia, was had and entered of record in said cause, in words and figures following, to-wit:

133 Title of Cause.

At this day on motion of Mr. F. M. Hartman, attorney for Plaintiff in Error herein, it is ordered by the Court that oral argument be granted in this cause and the hearing set for January 21, 1909.

And on the same day to-wit: the twelfth day of January, 1909, being one of the regular juridical days of the January term of said court, 1909, the following order, inter alia, was had and entered of record in said cause, in words and figures following, to-wit:

Title of Cause.

At this day, on motion of Mr. F. M. Hartman, attorney for Plaintiff in Error herein, it is ordered that Messrs. Cox & Franklin be entered as associate counsel.

And on to-wit: the twenty-first day of January, 1909, being one of the regular juridical days of the January term of said court, 1909, the following order, inter alia, was had and entered of record in said cause in words and figures following, to-wit:

Title of Cause.

134 This cause coming on at this time for hearing was argued by Mr. F. M. Hartman and Mr. Alfred Franklin for Plaintiff in Error and by Mrs. Sorin for Defendant in Error, and cause ordered submitted.

And on the same day to-wit: the twenty-first day of January, 1909, being one of the regular juridical days of the January term of said court, 1909, the following order, inter alia, was had and entered of record in said cause, in words and figures following, to-wit:

Title of Cause.

On motion of Mr. Alfred Franklin, it is ordered by the Court that Plaintiff in Error herein be granted ten days within which to file supplemental brief.

It is further ordered by the Court that Defendant in Error herein be granted fifteen days thereafter within which to file supplemental brief.

And on to-wit: the twenty-second day of January, 1909, being one of the regular juridical days of the January term of said court, 1909, the following order, inter alia, was had and entered of record in said cause, in words and figures following to-wit:

135 Title of Cause.

At this day, on motion of Mrs. Sorin, attorney for Defendant in Error, it is ordered by the Court that she is granted leave to correct citation in brief of Defendant in Error.

And on to-wit: the twentieth day of March, 1909, there was filed in the clerk's office of said court in said entitled cause a certain Opinion in words and figures following, to-wit:

In the Supreme Court of the Territory of Arizona.

No. 1009.

JAMES H. WORK, Plaintiff in Error,

vs.

THE UNITED GLOBE MINES, a Corporation, Defendant in Error.

Error to District Court, Gila County.

Before Mr. Justice Nave.

Suit to quiet title to patented mining claims brought by James H. Work against the United Globe Mines. Judgment for defendant

quieting its title to said mining claims upon its cross complaint, and plaintiff brings error. Affirmed.

Francis M. Hartman, for plaintiff in error: Frank Cox and Alfred Franklin, of counsel.

Herring, Sorin and Ellinwood, for defendant in error.

136 SLOAN, *J.*:

The questions raised by counsel for plaintiff in error on the record are such as do not require any general statement of facts and can be conveniently disposed of by stating them in the form of interrogatories embracing the essential facts of the record upon which they are based.

1. In a suit to quiet title to patented mining claims brought under Chapter 1, Title 71, Revised Statutes, is a cross-complaint, setting up title by adverse possession for the statutory period and praying for the quieting of such title as against plaintiff, a proper pleading under our statutes? It is contended by counsel for plaintiff in error that adverse possession for the statutory period does not confer title so as to permit one to maintain an action to quiet title based upon such adverse possession. The argument is that under paragraph 2942, Revised Statutes, title by adverse possession is only available in suits which have for their direct and immediate object the recovery of the possession of real property, and that an action to quiet title under our statutes not being one brought directly and immediately for the recovery of the possession of real property, title by adverse possession may be neither pleaded as a defense to such action nor can it form a basis for affirmative relief by way of cross-complaint. Said paragraph reads as follows: "Whenever in any case the action of a person for the recovery of real property is barred by any of the provisions of this title the person who pleads and is entitled
137 to the bar shall be held to have full title precluding all claims." The construction of this statute in its effect upon actions to quiet title is not now in this territory an open question. The above paragraph, together with the body of our statutes of limitations, was adopted from the statutes of the State of Texas. The Supreme Court of that state, in Moody vs. Holcomb, 26 Texas, 714, held that adverse possession of lands for the statutory period confers title thereto which may be quieted in an action brought for that purpose by the party asserting such title. This decision was rendered prior to the adoption of the statute by this territory and after its enactment by the legislature of the State of Texas. This Court, in the case of Pacheco vs. Wilson, 2 Arizona, 411, has held that title by adverse possession is sufficient title to maintain a complaint to quiet title. This decision was rendered in June 1888, nearly a year after the statutes of 1887, including the paragraph in question, took effect.

The Supreme Court of the United States, in a number of decisions, beginning with Bradstreet vs. Huntington, 5 Pet. 402, has held that adverse possession for the statutory period confers title which may be asserted either in law or in equity and in any form of action.

Sharon vs. Tucker, 144 U. S. 533.

Campbell vs. Holt, 115 U. S. 620.

138 2. May a foreign corporation, which has complied with all the requirements of our statutes governing such corporations doing business in the territory, and which has its principal place of business within the territory, acquire title to realty by adverse possession for the statutory period?

There is some conflict of authority upon this point. The Supreme Courts of the states of New York and Nevada have held, under statutes somewhat akin to ours though not so full and explicit in granting privileges of citizenship to such corporations, that it may not. Missouri, Nebraska, Iowa and Minnesota hold to the contrary under similar statutes and for reasons which seem especially applicable to foreign corporations doing business within the territory under the permission granted by the statute. These reasons are that the purpose of statutes of limitations, in allowing specified times for commencing actions and in making exceptions to the running of such times, is a practical one, and that is to give to any plaintiff a reasonable opportunity to seek his remedy; and that a mere theoretical absence from the state, as in the case of a foreign corporation having a duly appointed agent upon whom service may be had within the jurisdiction, not preventing the bringing of suit and the obtaining of service against the absentee, does not prevent in any way the bringing of the action and should not, therefore, come within the exception common to statutes of limitations, that where
139 the defendant be out of the state when the cause of action accrues the limitation does not begin to run until his return, or if after the cause of action accrues he departs from and resides out of the state the time of his absence is not to be included within the time limited for the commencement of the action.

St. Paul vs. Chicago, etc. R. Co. 48 N. W. 17.
Sidway vs. Missouri L. L. Stock Co., 86 S. W. 156.
O'Connor vs. Aetna Life Insurance Co. 93 N. W. 137.
Wall vs. Chicago & N. W. Ry. Co. 29 N. W. 427.

The existing statute upon the rights of foreign corporations who may have complied with the law relating thereto is so comprehensive as to leave no doubt as to the legislative intent to give such corporations all rights or property possessed by domestic corporations, except where specifically limited in the amount of land which they may hold. Paragraph 913, Revised Statutes, reads:

"Upon complying with the provisions of this chapter any association, company or corporation organized or incorporated under the laws of any other state or territory, or any foreign country, shall be qualified and competent to take, receive and acquire, either by purchase or by operation of law, and possess, own, hold and dispose of any and all kinds of real or personal property within this territory, and to prosecute and defend, and to appear, especially and generally, in any action in any court of or within this territory, and shall
140 have, hold and enjoy, except as hereinafter provided, the same rights and privileges as are now held and enjoyed, or that may be hereafter held and enjoyed by any association, company or corporation organized or incorporated under the laws of the territory."

Under this statute we have no hesitation in holding that a foreign corporation, complying with the requirements of the statutes governing such corporations doing business within this territory, may acquire title to realty by adverse possession for the statutory period.

3. Do our statutes of limitations run against a non-resident? The plaintiff, Work, is and has been during the time covered by the defendant's possession of the mining claims in controversy a resident of the state of New York. It is contended by his counsel that the statutes of limitations pleaded by the defendant in error in its cross-complaint did not run against him. This contention obviously is made under a mis-apprehension of our statutes. It is nowhere provided that the absence from the territory of any person of sound mind, over the age of twenty one years, and not imprisoned, prevents any statute of limitations from running against him while so absent. On the contrary, by paragraph 2964, absence from the territory is made to toll the statute only as to any cause of action which any person is entitled to bring against him. In other words mere absence, under the statute, does not operate to the advantage of the
141 absentee but to his disadvantage, and not to the disadvantage of persons who may have causes of action enforcible against him. We, therefore, answer this interrogatory in the affirmative.

4. Is it essential to good pleading in a cross-complaint setting up title by adverse possession, under paragraph 2937, Revised Statutes, that a specific averment be made that the deed, under which the claim be made, was not a forged instrument?

We answer this interrogatory in the negative, assuming, as was the case in the cross-complaint filed by defendant in error in this case, that it be alleged that the cross-complainant held under a recorded deed from certain grantors named "conveying said premises" etc. Such an allegation is equivalent to an averment that the deed has been executed by the grantors named, else it could not possibly have conveyed the premises named.

5. Does the ten years' statute of limitations found in paragraph 2938, Revised Statutes, apply to the case of the defendant in error who sets up such statute in his cross-complaint to show title by adverse possession under it, the statute having been adopted for the first time in the territory by the revision of 1901? In other words, is the ten years' statute to be allowed to have a retrospective operation or is it to be construed as having a prospective effect merely? In the case of Curtis vs. Boquillas Land & Cattle Co. 9 Ariz. 62,
142 we had occasion to consider this question and we there stated, as the general rule applicable to new statutes of limitations, that they will not be held to be retroactive in effect unless it clearly appears that the legislature so intended. In the case of Crowell vs. Davenport, decided in the last term of this court, (94 Pac. 1114), we expressed our approval of what was said in Curtis vs. Boquillas land & Cattle Co. on this subject, and reaffirmed our adherence to the rule of construction that, unless the contrary intent be expressed, a new statute of limitation will be given a wholly prospective effect. In the case of Cummings, Administrator, vs. Rosenburg, et al., decided at this term we have held that the legislative intent to give a retrospec-

tive effect to the statute appears not only from the language of the statute but also from a consideration of the fact that its operation was postponed from the date of its passage to September 1st, 1901, a period exceeding five months, which postponement, if the statute was intended to have a prospective effect merely, would seem to have been without reason or purpose. Following our decision in the Cummings case we hold that the ten years' statute is to be given a retrospective operation.

6. If a deed relied upon under the five years' statute refers to a recorded tax deed for a fuller description of the property conveyed, and as having been conveyed by the board of supervisors of the county to the grantors named in the deed, and an inspection
143 of such recorded deed so referred to shows the latter to be void upon its face, does such reference to the invalid deed prevent the acquisition of title by adverse possession under said paragraph 2937? It is a controverted question whether, under statutes similar to the one in question, a deed which is void on its face will give such color of title as will set the statute in motion. The weight of authority is perhaps in favor of the contention that it does not, and this is the rule as laid down by the Supreme Court of Texas.

Schliecher vs. Gatlin, 20 S. W. 120.

Green vs. Hugo, 81 Texas, 452.

But it has likewise been held by the Supreme Court of Texas in Frey vs. Baker, 59 Texas, 404, that a deed void for matters *dehors* the instrument itself will constitute color of title under the statute, provided it purports to convey the land in controversy; and this is the general rule.

Wright vs. Madison, 59 U. S. 50.

As the deed relied upon by the defendant in error was not void upon its face although it referred, as a part of its description, to another deed which was void upon its face, it was never-the-less under all the decisions which have come under our observation, sufficient upon which to base title by adverse possession under the five year statute.

7. Where a case was submitted, prior to the amendment of our statute relating to findings of fact, upon an agreed statement
144 of facts, were findings of fact by the court required and necessary to sustain a judgment where no request for findings appears to have been made?

Obviously, where the facts were all agreed to there was no necessity for findings by the Court, and where the conclusion of law, arising from the facts under the issue made by the pleadings, is readily ascertainable from the judgment, the latter itself is a sufficient decision under paragraph 1405, Revised Statutes. Where, as in this case, but one conclusion of law may properly be made from the facts found, the judgment itself is a sufficient decision, and no separate statement of such conclusion of law could add anything in the way of definiteness and certainty to the record.

We find no error in the record, and the judgment of the court below is affirmed.

RICHARD E. SLOAN,
Associate Justice.

We concur:
EDWARD KENT, *C. J.*
FLETCHER M. DOAN, *A. J.*
JOHN H. CAMPBELL, *A. J.*

145 And on the same day to-wit: the twentieth day of March, 1909, being one of the regular juridical days of the January term of said court, 1909, the following order and judgment, inter alia, was had and entered of record in said cause, in words and figures following, to-wit:

No. 1009.

JAMES H. WORK, Plaintiff in Error,
vs.
THE UNITED GLOBE MINES, a Corporation, Defendant in Error.

This cause having been heretofore submitted, and by the Court taken under advisement, and the Court having considered the same, and being fully advised in the premises:

It is ordered that the judgment of the court below be, and the same is hereby, affirmed.

It is further ordered, adjudged and decreed that the Defendant in Error herein, do have and recover of and from James H. Work, Plaintiff in Error herein, and The American Surety Company of New York, surety on bond herein, its costs in this court, taxed at Fifty-five and 15-100 ($55.15) Dollars, together with its costs in the court below in this cause incurred.

146 And on to-wit: the first day of April, 1909, came the Plaintiff in Error by his attorney, and filed in the clerk's office of said court in said entitled cause his certain Petition for Rehearing, in words and figures following, to-wit:

In the Supreme Court of the Territory of Arizona.

No. 1009.

JAMES H. WORK, Plaintiff in Error,
vs.
THE UNITED GLOBE MINES, a Corporation, Defendant in Error.

Petition for Rehearing by Plaintiff in Error.

Comes now James H. Work, plaintiff in error, in the above entitled action, and prays the Court to grant him a rehearing in said cause and set aside and vacate the order, decision and judgment

made herein on March 20th, 1909, by this Court, affirming the judgment of the District Court of the Fifth Judicial District of the Territory of Arizona, in and for the County of Gila, for the following reasons:

1. That the answer of The United Globe Mines, the defendant in error and defendant below does not state facts sufficient to constitute a defense.

2. That the said answer does not state facts sufficient to constitute a defense to the cause of action set up in plaintiff's complaint.

3. That the said answer does not state facts sufficient to
147 entitle the defendant to the relief prayed for and does not state facts sufficient to constitute a good plea of the statute of limitations or a plea of the bar of the statute of limitations.

4. That the said answer does not allege that the defendant a foreign corporation, had a regularly appointed agent in the Territory of Arizona or had a domicile or place of business in the Territory of Arizona during all the times therein mentioned; and does not allege that the defendant, a foreign corporation, had complied with the statutes of the Territory of Arizona in reference to foreign corporations, to-wit, Paragraphs 909 and 910, Revised Statutes of Arizona, 1901.

5. The said answer does not allege that the defendant relies on the statutes of limitations of the Territory of Arizona as a defense to plaintiff's action.

6. The said answer does not allege or point out what particular statute of limitations of the Territory of Arizona, if any, the defendant relies upon.

7. The said answer does not set up or plead the statutes of limitations of the Territory of Arizona.

8. The said answer does not allege that defendant took possession of the land in question with intent to claim against plaintiff the true owner thereof.

9. That said answer does not allege that plaintiff, the true owner
of the land in question, had actual knowledge of the adverse
148 claim and possession of the defendant.

10. The said answer does not allege that the defendant, a foreign corporation, was authorized or empowered by its charter or authorized to obtain title to real estate by adverse possession, or to plead or avail itself of the statute of limitations.

11. The said answer does not allege that the adverse possession of defendant was not obtained by the assent of plaintiff.

12. That the Court did not find that plaintiff's cause of action was barred.

13. That the defendant's answer did not contain facts sufficient to entitle it to affirmative relief prayed for as against plaintiff's suit to quiet the title in plaintiff of the mines in question.

14. Because defendant did not seek in its answer to quiet the title of the mines in question as against plaintiff.

15. Because plaintiff's action was a suit to quiet title to the mines in question brought under Chapter 1 of Title 71, Revised Statutes of Arizona, 1901, and was not a suit to recover real property.

16. That the Statutes of Arizona provide for a certain form of action by said Chapter 1 Title 71, to quiet title to real property, and another form of action by Chapter 2, Title 71, for the recovery of real property.

17. That plaintiff's suit was not an action for the recov-
149 ery of real property.

18. That the statutes of limitations of the Territory of Arizona can only be pleaded in suits brought for the recovery of real property.

19. That the answer of defendant did not contain fact sufficient to constitute a cross-complaint to plaintiff's suit to quiet title to the mines in question.

20. The said answer did not set forth the nature or extent of defendant's estate, and did not describe the premises in question as required by the Statutes of Arizona in reference to suits to quiet title.

21. The said answer did not allege that defendant was credibly informed and believed that the plaintiff made some claims adverse to defendant in and to the said premises, and did not pray for relief as provided by the statutes in reference to suits to quiet title.

22. Defendant's answer does not allege that it claims title to the mines in question by reason of the statutes of limitations of the Territory of Arizona.

Wherefore, plaintiff in error, James H. Work, prays this Honorable Court that a rehearing be granted herein and that the order and judgment above referred to be set aside and vacated and that the judgment of the lower court be reversed and judgment rendered herein in favor of plaintiff in error, quieting his title to the said mines as against defendant in error.

150 Respectfully submitted,

FRANCIS M. HARTMAN,
Attorney for Plaintiff in Error.
FRANK COX,
ALFRED FRANKLIN,
Of Counsel.

And on the same day to-wit: the first day of April, 1909, came the Plaintiff in Error by his attorney, and filed in the clerk's office of said court in said entitled cause his certain Application for Oral Argument on Petition for Rehearing, in words and figures following, to-wit:

In the Supreme Court of the Territory of Arizona.

No. 1009.

JAMES H. WORK, Plaintiff in Error,
vs.
THE UNITED GLOBE MINES, a Corporation, Defendant in Error.

Application of Plaintiff in Error for Oral Argument on Petition for Rehearing.

Now comes the plaintiff in error, James H. Work, and makes application to this Honorable Court for an oral argument of his petition for rehearing.

FRANCIS M. HARTMAN,
Attorney for Plaintiff in Error.
FRANK COX,
ALFRED FRANKLIN,
Of Counsel.

151 And on to-wit: the thirtieth day of April, 1909, being one of the regular juridical days of the January term of said court, 1909, the following order, inter alia, was had and entered of record in said cause, in words and figures following, to-wit:

Title of Cause.

At this day, it is ordered by the Court that the Motion for Rehearing filed herein by Plaintiff in Error, be submitted.

And on to-wit: the first day of May, 1909, being one of the regular juridical days of the January term of said court, 1909, the following order, inter alia, was had and entered of record in said cause, in words and figures following, to-wit:

Title of Cause.

At this day, it is ordered by the Court that the Motion for Rehearing filed herein by Plaintiff in Error, and heretofore submitted, be, and the same is hereby, denied.

And on the same day to-wit: the first day of May, 1909, being one of the regular juridical days of the January term of said court, 1909, the following order, inter alia, was had and entered of
152 record in said cause, in words and figures following, to-wit:

Title of Cause.

At this day comes Mr. Francis M. Hartman for Plaintiff in Error herein, in open court, and gives notice of appeal to the Supreme Court of the United States, from the judgment of this court, and

Upon motion of Mr. Francis M. Hartman, it is ordered that the notice of appeal be entered, the appeal be and the same is hereby allowed, the amount of the cost bond fixed in the sum of One Thousand ($1,000.) Dollars, and the Mandate stayed for sixty days.

And on to-wit: the thirteenth day of March, 1911, came the Plaintiff in Error by his attorney, and filed in the clerk's office of said court in said entitled cause, his certain Affidavit of Amount in Controversy, in words and figures following, to-wit:

153 In the Supreme Court of the Territory of Arizona.

No. 1009.

JAMES H. WORK, Plaintiff in Error,
vs.
THE UNITED GLOBE MINES, a Corporation, Defendant in Error.

Affidavit of Amount of Controversy.

TERRITORY OF ARIZONA,
County of Pima, ss:

Francis M. Hartman, being first duly sworn, deposes and says: That he is one of the Attorneys of Record for the Plaintiff in Error, James H. Work, in the above entitled cause; and as such Attorney he is familiar with the matters and things in issue in said cause, and that the amount in controversy in said above named cause exceeds the sum of Five Thousand Dollars ($5,000.00), exclusive of interest and costs.

FRANCIS M. HARTMAN.

Subscribed and sworn to before me this 27th day of February, A. D., 1911.

[SEAL.] R. W. LANGWORTHY,
Notary Public in and for Pima County, Territory of Arizona.

My commission expires Aug. 10, 1914.

154 And on the same day to-wit: the thirteenth day of March, 1911, there was filed in the clerk's office of said court in said entitled cause, a certain Cost Bond on Appeal, in words and figures following, to-wit:

In the Supreme Court of the Territory of Arizona.

JAMES H. WORK, Plaintiff in Error,
vs.
THE UNITED GLOBE MINES, a Corporation, Defendant in Error.

Cost Bond on Appeal.

Know all men by these presents, That we, James H. Work, as principal, and the American Surety Company of New York, of 100 Broadway, Borough of Manhattan, New York City, New York, as surety, are held and firmly bound unto The United Globe Mines, a corporation, Defendant in Error in the above entitled action, in the full and just sum of One Thousand Dollars ($1,000.00), lawful money of the United States of America, to be paid to the said The United Globe Mines, a corporation, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our *hands* and dated this 27th day of February, A. D. 1911.

Whereas, lately, at a Supreme Court for the Territory
155 of Arizona, holden on the 20th day of March, 1909, in a suit depending in said Court between the above named James H. Work, as Plaintiff in Error, and said The United Globe Mines, a corporation, as Defendant in Error, a judgment and decree was rendered against the said James H. Work; and

Whereas, the said Court, on May 1st, 1909, made and entered an order denying the petition of said James H. Work for a re-hearing of said cause; and the said James H. Work having obtained an appeal to reverse the decree and judgment in the aforesaid suit, and the citation directed to the said The United Globe Mines, a corporation, citing and admonishing it, to be and appear at a session of the Supreme Court of the United States to be held at the City of Washington on the — day of May next.

Now, the condition of the above obligation is such that, if the said James H. Work shall prosecute his appeal to effect and answer all damages and costs, if he fails to make good his plea, then the above obligation to be void; else to remain in full force and effect.

JAMES H. WORK.
JAMES HENRY WORK. [SEAL.]
[SEAL.] AMERICAN SURETY COMPANY
OF NEW YORK,
By HORACE P. HOLLISTER,
Resident Vice-President.

23863.

Attest:

JARED F. HARRISON,
Resident Assistant Secretary.

156 STATE OF NEW YORK,
County of New York, ss:

Before me, Clinton D. Ganse, a Notary Public in and for the County of Kings, Cert. filed in N. Y. County, State of New York, on this day personally appeared James H. Work, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office this 27 day of February, A. D., 1911.

My commission expires Mar. 30, 1912.

[SEAL.] CLINTON D. GANSE,
Notary Public, Notary Public, *Kings County.*

Certificate filed in New York County.

Approved:

EDWARD KENT,
Chief Justice of the Supreme Court of the Territory of Arizona.

STATE OF NEW YORK,
County of New York, ss:

On this 27th day of February, 1911, before me personally appeared Horace P. Hollister, Resident Vice President of the American Surety Company of New York, to me known, who, being by me duly sworn, did depose and say: that he resides in Mt. Vernon,
157 N. Y., that he is the Resident Vice President of the American Surety Company of New York, the Corporation described in and which executed the above instrument; that he knows the corporate seal of said Corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Trustees of said Corporation; and that he signed his name thereto by like order; and that the liabilities of said Corporation do not exceed its assets as ascertained in the manner provided by law. And the said Horace P. Hollister further said that he is acquainted with Jared F. Harrison, and knows him to be one of the Resident Assistant Secretaries of said Corporation; that the signature of said Jared F. Harrison subscribed to the said instrument is in the genuine handwriting of the said Jared F. Harrison and was thereto subscribed by the like order of the said Board of Trustees, and in the presence of him the said Horace P. Hollister, Resident Vice President.

[SEAL.] E. A. FARRELL,
Notary Public, New York County.

Certificate filed in all counties.

STATE OF NEW YORK,
County of New York, ss:

Jared F. Harrison, being duly sworn, says: That he is a Resident Assistant Secretary of the American Surety Company of New York; that said Company is a corporation duly created, existing and
158 engaged in business as a surety company under and by virtue of the laws of the State of New York, and has duly complied with all the requirements of the laws of said State applicable to said Company, and is duly qualified to act as surety under such laws. That said Company has also duly complied with and is duly qualified to act as surety under the Act of Congress of August 13, 1894, entitled "An Act relative to recognizances, Stipulations, bonds and undertakings and to allow certain corporations to be accepted as surety thereon;" that the within is a true copy of the last statement of the assets and liabilities of said Company as rendered pursuant to section 4 of said Act of Congress; that said statement is true and that said American Surety Company of New York is worth more than $6,000,000 over and above all its debts and liabilities and such exemptions as may be allowed by law.

JARED F. HARRISON

Subscribed and sworn before me this 27th day of Feb'y, 1911.

[SEAL.]

E. A. FARRELL,
Notary Public, New York County.

Certificate filed in all counties.

(Endorsed on back.)

American Surety Company of New York.
Incorporated April 14, 1884.
General Offices, 100 Broadway.

Financial Statement, Dec. 31, 1910.

159 Resources.

Real Estate:		
*Home Office Building and Land, unencumbered	$3,000,000.00	
†N. Y. City Water Front, unencumbered	166,047.91	
		$3,166,047.91
Stocks and Bonds, Market Value		3,612,561.63
Cash in Banks and Offices		955,804.07
Premiums in Course of Collection		309,412.05
Accrued Interest and Rents		55,469.99
Bills and Accounts Receivable		197,166.67
		$8,296,462.32

Liabilities.

Capital Stock	$2,500,000.00
Surplus	3,532,086.89
Reserve for Re-Insurance,	1,377,822.93
‡Reserve for Contingent Claims	825,467.48
Reserve for Contingent Expenses	47,545.40
Bills and Accounts Payable, not due	13,539.62
	$8,296,462.32

*Appraised at ..... $3,270,000.00 } By New York Insur-
†Appraised at ..... 210,000.00 } ance Department
‡Includes Special Reserve of 200,000.00

160 *Extract From the Record Book of the Board of Trustees of the American Surety Company of New York.*

The first quarterly meeting of the Board of Trustees of the American Surety Company of New York, after the annual Stockholders' meeting, was held at the office of the Company No. 100 Broadway, New York City, on Wednesday, January 18, 1911, at 12 o'clock noon.

"The Secretary read the report of the Nominating Committee as follows:

"To the Board of Trustees of the American Surety Company of New York.

"GENTLEMEN: The Committee appointed by the Executive Committee of this Company at their meeting held Tuesday, December 13, 1910, for the purpose of nominating officers of the Company, * * * for the ensuing year, beg leave to report as follows:

"We nominate for * * *

Place.	Resident vice-presidents.	Resident assistant secretaries.
New York, N. Y.	Richard Deming	A. L. Adams
	Horace P. Hollister	Marshall L. Brower
	Marshall L. Brower	William H. Bishop
	A. E. Cottrell	Horace P. Hollister
		Jared F. Harrison
		A. E. Cottrell

* * * * * * *

"Whereupon, it was

161 "Resolved, that the Secretary be authorized to cast one ballot on behalf of the Trustees present for the officers, members of the Executive Committee, Finance Committee, Committee on Accounts, Committee on Capital Box, and Counsel, as recommended by the Nominating Committee for the ensuing years; which was done, and thereupon the aforementioned persons were declared to have been unanimously elected to their respective offices for the ensuing year.

* * * * * * *

"The following resolution was adopted:

"Resolved, that the Resident Vice Presidents be and they hereby are, and each of them is hereby authorized and empowered to execute and to deliver and to attach the seal of the Company to any and all obligations for or on behalf of the Company, such obligations, however, to be attested in every instance by the Resident Assistant Secretary."

* * * * * * *

STATE OF NEW YORK,
County of New York, ss:

I, H. A. Reiss, Assistant Secretary of the American Surety Company of New York, do hereby certify that I have compared the foregoing extracts and transcripts, from the Record Book of the Board of Trustees of the American Surety Company of New York, with the original record of said Board, and that the same are correct extracts and transcripts therefrom as they appear of record and are set forth and contained in said Record Book; and I further certify that
162 I have compared the foregoing resolutions with the original thereof, as recorded in the Minute Book of said Company, and do certify that the same is a correct and true transcript therefrom, and of the whole of said original resolutions; and that the said resolutions have not been revoked or rescinded.

Given under my hand and the seal of the Company, at the City of New York, this 19th day of January, 1911.

[SEAL.]

H. A. REISS,
Assistant Secretary.

And on the same day, to-wit: the thirteenth day of March, 1911, came the Plaintiff in Error by his attorney, and filed in the clerk's office of said court in said entitled cause, his certain Assignment of Errors, in words and figures following, to-wit:

163 In the Supreme Court of the Territory of Arizona.

No. 1009.

JAMES H. WORK, Plaintiff in Error,

vs.

THE UNITED GLOBE MINES, a Corporation, Defendant in Error.

Assignment of Errors.

And now comes James H. Work, Plaintiff in Error, and prays an appeal from the judgment and decree of this Court, and the order of this Court denying his Petition for a Rehearing herein to the Supreme Court of the United States, and files this his Assignment of Errors:

I. The Supreme Court of the Territory of Arizona erred in holding that the plea of the statute of limitations attempted to be set up

by Defendant in Error (defendant below) in its answer, was a sufficient plea of the statute of limitations to bar the cause of action of Plaintiff in Error (plaintiff below), for the following reasons:

(*a*) Because the defendant in its said answer does not plead any statute of limitation of the Territory of Arizona.

(*b*) Because the defendant in its said answer, does not rely upon the statutes of limitation of the Territory of Arizona, to bar plaintiff's cause of action, or to entitle it to the affirmative relief prayed for.

(*c*) Because said answer does not allege that defendant took possession of the mines in question with intent to claim against plaintiff, the true owner thereof.

164 (*d*) Because the said answer does not allege that plaintiff, the true owner of the mines in question, had actual knowledge of the alleged adverse claim and possession of defendant.

II. The said Supreme Court erred in holding that defendant's answer contained facts sufficient upon which to base a judgment in favor of defendant for affirmative relief, to-wit: that the defendant was the owner of the mines in question, for the following reasons:

(*a*) Because the said answer does not allege that defendant did not deraign title through a forged deed.

(*b*) Defendant does not allege that it is not claiming under a forged deed.

(*c*) Does not allege that the defendant corporation was authorized and empowered by its charter, to obtain title to real estate by adverse possession, or to plead or avail itself of the statute of limitations.

(*d*) Does not allege that the defendant paid the taxes on said mines, each and every year, for more than five years next preceding the commencement of plaintiff's action.

(*e*) Does not allege that plaintiff's cause of action accrued more than five years prior to the commencement of same.

(*f*) Does not allege that more than five years elapsed between the time of the accrual of plaintiff's cause of action and the time of the commencement of same.

(*g*) Does not allege that plaintiff's cause of action accrued more than ten years prior to the commencement of same.

(*h*) Does not allege that more than ten years elapsed from the time of the accrual of plaintiff's cause of action and the time of commencement of said action.

165 III. The said Supreme Court erred in holding that the defendant, The United Globe Mines, a foreign corporation, could avail itself of, and set up the plea of the statute of limitations of the Territory of Arizona.

IV. The said Supreme Court erred in holding that the defendant, The United Globe Mines Company, a foreign corporation, could obtain title to real estate, to-wit, the mines in question, by adverse possession.

V. The said District Court erred in overruling and denying plaintiff's motion for new trial, for the following reasons:

(*a*) That the evidence does not sustain the judgment.

(*b*) That the judgment was contrary to the law and the evidence.

(*c*) That the judgment is not supported by the evidence.

(*d*) That the judgment is not supported by the pleadings.

VI. The said Supreme Court erred in holding that Paragraphs 2937, 2938 and 2942, Revised Statutes of Arizona, 1901, in reference to limitation of actions for the recovery of real property, applied to suits brought under Chapter I, Title LXXI, Rev. Sts., Arizona, 1901, entitled "Actions to Quiet Title."

VII. The said Supreme Court erred in holding that plaintiff's cause of action was barred by Paragraphs 2937, 2938 and
166 2942, Rev. Sts. of Arizona, 1901, for the reason that plaintiff's action was a suit to quiet the title to the mines in question, and was not a suit for the recovery of real property.

VIII. The said Supreme Court erred in holding that the ten years statute of limitations found in Paragraph 2938, Revised Statutes of Arizona, 1901, applied to the case at Bar, and should be given a retrospective operation, for the reason that said statute was never in force in Arizona and was not enacted until September 1, 1901, only two years, two months and fifteen days prior to the commencement of plaintiff's action.

IX. The said Supreme Court erred in holding that the five years statute of limitations found in Paragraph 2937, Revised Statutes of Arizona, 1901, applied to the case at Bar, and that plaintiff's action was barred thereby; for the reason that said statute was enacted in February, 1901, to take effect September 1, 1901, and that plaintiff's action was commenced on November 16, 1903, less than three years after said statute was enacted.

X. The said Supreme Court erred in holding that a certain deed bearing date January 31, 1893, from W. E. Dodge and D. W. James to the United Globe Mines, purporting to convey the mines in question, which said deed referred to a certain other tax deed void on its face, bearing date December 15, 1890, from the Board of Supervisors
of the County of Gila, Territory of Arizona, to D. W. James
167 and W. E. Dodge, purporting to convey to the said James and Dodge, the mines in question, was sufficient to start the statute of limitations running against plaintiff, and was sufficient upon which to base title by adverse possession under the five year statute of limitations found in Paragraph 2937, Revised Statutes of Arizona, 1901.

XI. The said Supreme Court erred in affirming the judgment and decree of the said District Court.

XII. The said Supreme Court erred in denying the Petition for a Re-hearing of Plaintiff in Error.

Wherefore Plaintiff in Error prays that the judgment and decree of the Supreme Court of the Territory of Arizona be reversed.

FRANCIS M. HARTMAN,
Attorney for Plaintiff in Error.
FRANK COX,
ALFRED FRANKLIN,
Of Counsel.

And on the same day, to-wit: the thirteenth day of March, 1911, there was filed in the clerk's office of said Court in said entitled cause, a certain certificate of Agreed Statement of Facts, in words and figures following, to-wit:

168 In the Supreme Court of the Territory of Arizona.

No. 1009.

JAMES H. WORK, Plaintiff in Error,
vs.
THE UNITED GLOBE MINES, a Corporation, Denfendant in Error.

Certificate of Agreed Statement of Facts.

I, Edward Kent, Chief Justice of the Supreme Court of the Territory of Arizona, do hereby certify that the above entitled action was tried in said Court, upon the complaint of plaintiff, the answer of the defendant and the agreed statement of facts; that no other evidence was heard in the Supreme Court of the Territory of Arizona; and that the said Supreme Court takes the facts as agreed to by the parties, as shown by the record and on file herein, and makes them the Statement of Facts in this cause.

In witness whereof, I have hereunto set my hand on this 13th day of March, A. D. 1911.

EDWARD KENT,
Chief Justice of the Supreme Court of the Territory of Arizona.

169 UNITED STATES OF AMERICA,
Territory of Arizona, ss:

I, F. A. Tritle, Jr., Clerk of the Supreme Court of the Territory of Arizona, do hereby certify the above and foregoing to be a full, true and complete copy and Transcript of the Record in a certain cause lately pending in said court, No. 1009, wherein James H. Work was Plaintiff in Error, and the United Globe Mines, a corporation, was Defendant in Error, including the Abstract of Record, Motion to Dismiss Writ of Error, Answer to Motion to Dismiss Writ of Error, Amended Answer to Motion to Dismiss, Judgment, Motion for Rehearing and for Oral Argument, Opinion, Judgment, Motion for Rehearing, Application for Oral Argument on Motion for Rehearing, Affidavit of Amount in Controversy, Cost Bond, Assignment of Errors, Certificate of Agreed Statement of Facts, and all minute entries had and entered of record, as the same remain on file and of record in my office.

And I further certify that the same constitute the record in said cause.

And I further certify that the attached Citation and Order of Enlargement, are the originals issued by said Supreme Court.

In witness whereof, I have hereunto set my hand and the seal of said Court, this 14th day of June, A. D. 1911, at Phœnix, Arizona.

[Seal Supreme Court of Arizona.]

F. A. TRITLE, JR.,
Clerk Supreme Court.

170 In the Supreme Court of the United States.

JAMES H. WORK, Appellant,
vs.
THE UNITED GLOBE MINES, a Corporation, Appellee.

Order Enlarging Time for Docketing and Filing Record in the Supreme Court of the United States.

The above named appellant having appealed to the Supreme Court of the United States from the judgment of the Supreme Court of the Territory of Arizona, and good cause having been shown why the time within which the case may be docketed and the record filed with the Clerk of the Supreme Court of the United States should be enlarged, it is hereby

Ordered that the time within which the case may be docketed and the record filed with the Clerk of the Supreme Court of the United States, be and the same is hereby enlarged until and including the 10th day of July, 1911, and the return day of the citation heretofore filed and served upon such appeal is hereby enlarged and extended until said last named day.

Dated May 10th, 1911.

EDWARD KENT,
Chief Justice Supreme Court, Territory of Arizona.

171 [Endorsed:] No. 1009. In the Supreme Court of the United States. James H. Work, Appellant, vs. The United Globe Mines, Appellee. Order Enlarging time for Docketing and Filing Record in the Supreme Court of the United States. Filed May 10, 1911. F. A. Tritle, Jr., Clerk.

172 In the Supreme Court of the Territory of Arizona.

No. 1009.

JAMES H. WORK, Plaintiff in Error,

vs.

THE UNITED GLOBE MINES, a Corporation, Defendant in Error.

Citation.

UNITED STATES OF AMERICA, *ss.*:

The President of the United States to The United Globe Mines, a Corporation, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at the City of Washington, on the 12th day of May A. D., 1911, pursuant to an appeal duly allowed by the Supreme Court of the Territory of Arizona on the 1st day of May, A. D., 1909, in a cause wherein James H. Work was Plaintiff in Error, and The United Globe Mines, a corporation, was Defendant in Error, and to show cause, if any there be, why the said judgment of the said Supreme Court of the Territory of Arizona, in said cause, in your favor, should not be set aside, reversed and corrected, and why speedy justice should not be done to the party in whose behalf said appeal is allowed.

Witness the Honorable Edward D. White, Chief Justice of the Supreme Court, the 13th day of March A. D., 1911.

EDWARD KENT,
Chief Justice of the Supreme Court of the Territory of Arizona.

173 [Endorsed:] No. 1009. In the Supreme Court of the Territory of Arizona. James H. Work, Plaintiff in Error, vs. The United Globe Mines, Defendant in Error. Citation. Service of within Citation admitted this 17th day of March, 1911. Herring & Sorin, Attorneys for Defendant in Error. Filed March 18, 1911. F. A. Tritle, Jr., Clerk.

Endorsed on cover: File No. 22,745. Arizona Territory Supreme Court. Term No. 336. James H. Work, appellant, vs. The United Globe Mines. Filed June 20th, 1911. File No. 22,745.

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No. 46

Supreme Court of the United States

JAMES H. WORK,

Appellant,

vs.

THE UNITED GLOBE MINES,

Respondent.

BRIEF OF APPELLANT.

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Supreme Court of the United States

October Term, 1912.

No. 336.

JAMES H. WORK,
Appellant,

vs.

THE UNITED GLOBE MINES,
Defendant.

STATEMENT OF FACTS.

This is an appeal from the judgment of the Supreme Court of the Territory of Arizona (fol. 5), affirming a judgment of the District Court of Arizona against the plaintiff and in favor of the defendant (fols. 12-18).

The action was brought to quiet title of the plaintiff to certain mining property, described in the said complaint (fols. 2-7). The complaint alleges that the plaintiff claims title in fee to the said premises and said defendant claims an estate or interest therein adverse to said plaintiff. That

the said claim of said defendant is without any right whatsoever, and that the said defendant has not any right, estate, title or interest whatsoever in or to the said premises or any part thereof, and that the title of the plaintiff is good and valid (fol. 6).

The defendant denies that the plaintiff is the owner of and in possession of and entitled to the possession of the premises described in the complaint or any part thereof (fol. 9).

The defendant sets up for a first defense that it was and had been for more than five years before the commencement of this action engaged in actual, continuous, uninterrupted, peaceable, exclusive, open, notorious, hostile and adverse possession of the said premises and has been cultivating, using, enjoying and working the same, paying taxes thereon and holding and claiming the same and the title thereto adversely to plaintiff and all the world, under a deed from William E. Dodge, and D. Willis James, which deed was duly recorded (fols. 8-9).

The defendant set up for a second defense that it had been in such possession of the said premises claiming the same adversely to plaintiff for ten years before the commencement of this action. It prays that it be adjudged to be the owner of and entitled to the possession of the said mines (fol. 10).

The case was submitted to the Court on an agreed statement of facts (see pages 18-31).

The facts submitted on behalf of the plaintiff were in substance that on the 24th day of November, 1882, the property in question was conveyed by the then owner Samuel B. Benn, owner of the O'Dougherty and Big Johnny Mines, to the Tacoma

Collector, of said County, entered upon the duplicate assessment roll, a statement that he had made a levy upon all property therein assessed, the taxes upon which had not been paid, and did immediately ascertain the total amount of taxes, and then made out a list of all persons and property, then owing taxes in said County, to the Territory of Arizona, and to the County of Gila, together with the costs and charges thereon, which said list was duly verified by him, and was completed on the last day of December, 1883, and included the property in question. That the said property was assessed for the fiscal year commencing on the first Monday in March, 1883, for the County and Territorial taxes as follows:

"Work, James H., Mortgagee on O'Dougherty and Big Johnny Mines, Globe Mining District, $25,000.00 Taxes $725.00 per cent. added, $36.25. Fees $5.67. Penalty $1.00, $807.92; that the property was twice offered for sale to pay the said taxes and there being still no bidder or purchaser it was struck off the Territory of Arizona. The deed further recites, that in consideration of the sum of $1,365.19, the said Board of Supervisors," "bargained, sold, conveyed and confirmed, and by "these presents do grant, bargain, convey and con- "firm, unto the said D. W. James and W. E. Dodge, "to their heirs and assigns forever, all the right, "title and interest and claim, which the said terri- "tory of Arizona has or ever had in or to all of "that lot, piece, or parcel of land, situate, lying and "being in the said County of Gila, Territory of "Arizona, hereinabove described, being the said "O'Dougherty and Big Johnny Mines" (fol. 44).

The facts submitted on the part of the defend-

That upon execution and delivery of said deed the defendant immediately went into possession of the property and that ever since the date of said deed, defendant had been in actual, hostile and adversed possession of said premises (fol. 51).

That ever since the conveyance to defendant on January, 31st, 1893, the defendant has been claiming to own the said mines, and has claimed title thereto, under said deed dated, Jan. 31st, 1893, and during all of this said time has claimed and held the said premises adversely to the plaintiff and all the world; and has paid the taxes on said mines.

It is further recited that the Board of Supervisors made and executed to the defendant's grantors, the deed which is heretofore referred to, which deed is annexed to the Statement of Facts, and marked "Defendant's Exhibit B" (see fols. 68-76)

It is further submitted by the defendant that the defendant's grantors, after execution of said deed, dated Dec. 15th, 1890, took possession of the mines and commenced mining thereon, and that from the time of said deed until they obtained said premises from the defendant, they were in actual, continuous, uninterrupted, peaceable, exclusive, open, notorious, hostile and adverse possession of the said premises (fol. 52).

From the opinion of the Court, which is printed on page 60 of the record, it appears that the Court bases its decision on the ground that the defendant had a right to invoke the Statute of Limitations, although it was a foreign corporation, and that the five and ten year Statute (Sec. 2937, 2938, Revised Laws of Arizona, 1901) applied to the case of the defendant.

Assignment of Errors.

I. The Supreme Court of the Territory of Arizona erred in holding that the plea of the statute of limitations attempted to be set up by defendant-in-error (defendant below) in its answer, was a sufficient plea of the statute of limitations to bar the cause of action of plaintiff-in-error (plaintiff below) for the following reasons:

(a) Because the defendant in its said answer does not plead any statute of limitations of The Territory of Arizona.

(b) Because the defendant in its said answer does not rely upon the statutes of limitation of the Territory of Arizona, to bar plaintiff's cause of action, or to entitle it to the affirmative relief prayed for.

(c) Because said answer does not allege that defendant took possession of the mines in question with intent to claim against plaintiff, the true owner thereof.

(d) Because the said answer does not allege that plaintiff, the true owner of the mines in question, had actual knowledge of the alleged adverse claim and possession of defendant.

II. The said Supreme Court erred in holding that defendant's answer contained facts sufficient upon which to base a judgment in favor of defendant for affirmative relief, to wit: that the defendant was the owner of the mines in question, for the following reasons:

(a) Because the said answer does not allege that defendant did not deraign title through a forged deed.

(b) Defendant does not allege that it is not claiming under a forged deed.

(c) Does not allege that the defendant corporation was authorized and empowered by its charter, to obtain title to real estate by adverse possession, or to plead or avail itself of the statute of limitations.

(d) Does not allege that the defendant paid the taxes on said mines, each and every year for more than five years preceding the commencement of plaintiff's action.

(e) Does not allege that plaintiff's cause of action accrued more than five years prior to the commencement of same.

(f) Does not allege that more than five years elapsed between the time of the accrual of plaintiff's cause of action and the time of the commencement of same.

(g) Does not allege that plaintiff's cause of action accrued more than ten years prior to the commencement of same.

(h) Does not allege that more than ten years elapsed from the time of the accrual of plaintiff's cause of action and the time of commencement of said action.

III. The said Supreme Court erred in holding that the defendant, The United Globe Mines, a foreign corporation, could avail itself of, and set up the plea of the statute of limitations of the Territory of Arizona.

IV. The said Supreme Court erred in holding that the defendant, The United Globe Mines Company, a foreign corporation, could obtain title to

not enacted until September 1, 1901, only two years, two months, and fifteen days prior to the commencement of plaintiff's action.

IX. The said Supreme Court erred in holding that the five years statute of limitations found in Paragraph 2937, Revised Statutes of Arizona, 1901, applied to the case at bar, and that plaintiff's action was barred thereby; for the reason that said statute was enacted in February, 1901, to take effect September 1, 1901, and that plaintiff's action was commenced on November 16, 1903, less than three years after said statute was enacted.

X. The said Supreme Court erred in holding that a certain deed bearing date January 31, 1893, from W. E. Dodge and D. W. James to the United Globe Mines, purporting to convey the mines in question, which said deed referred to a certain other tax deed void on its face, bearing date December 15, 1890, from the Board of Supervisors of the County of Gila, Territory of Arizona, to D. W. James and W. E. Dodge, purporting to convey to the said James and Dodge, the mines in question, was sufficient to start the statute of limitations running against plaintiff, and was sufficient upon which to base title by adverse possession under the five year statute of limitations found in Paragraph 2937, Revised Statutes of Arizona, 1901.

XI. The said Supreme Court erred in affirming the judgment and decree of the said District Court.

XII. The said Supreme Court erred in denying the petition for a rehearing of plaintiff in error.

POINTS.

I.

The defendant, being a foreign corporation, cannot set up the Statute of Limitations.

"A foreign Corporation is a person out of the State, within the meaning of the Statute, and cannot avail itself of the Statute of Limitations."

Larsen vs. Aultmann & Co., 86 Wis., 281; 39 Am. St., Rep., 893.

"A foreign corporation, though it has agents and does business within the State and a valid judgment might be entered against it on service of process on such agents therein, must be regarded as 'out of the State,' within the meaning of the Statute providing that if, when a cause of action accrues against a person, he is out of the State, the period limited for the commencement of the action shall not begin to run until he comes within the State."

Williams vs. Metropolitan Co., 68 Kan., 17; 74 Pac. 600.
State vs. Nat. Assn., 79 N. W., 223.
Robinson vs. Imperial Silver Mining Co., 5 Nevada, 43.

In this case the defendant pleaded adverse possession in itself for five years. The Court said:

"We are satisfied this defense is entirely unavailing to the defendant, it being a foreign corporation, and hence not entitled to plead the Statute. It having no existence within this State, and the Courts not having complete jurisdiction over it, it is brought within the provisions of section twenty-one of the Statute, which declares, 'If, when the cause of action shall accrue against a person, he is out of the State, the action may be commenced within the term herein limited, after his return to the State.'"

State vs. Cent. Pac. R. R. Co., 10 Nev., 47.
Barstow vs. Union Con. Silver Mng. Co., 10 Nev., 386.
Olcott vs. Tioga R. R. Co., 20 N. Y., 210.

"A foreign corporation sued in this State cannot avail itself of the Statute of Limitations. It is, like a natural person, within the exception to the operation of the Statute, by which the time of absence from the State is not to be taken as any part of the time limited for the commencement of an action against it."

"Foreign corporations, although having several agents and transacting business in a State, come within the provisions of these Statutes which make a saving as to absent debtors, for, although by comity they may transact business in another State, yet they are citizens, so to speak, of the State under the laws of which they are created and except by comity have no legal existence elsewhere, and consequently, are absent within the meaning

of the term as used in these statutes, from every State except the one in which they have a situs."

Clark vs. Bank, 10 Ark., 516; 52 Am. Dec. 248, with long monographic note at page 256.

II.

The deed from D. Willis James and W. E. Dodge to the defendant is insufficient to enable it to set up the five years Statute of Limitations (Sec. 2937, Revised Statutes of Arizona, 1901). BECAUSE it gives notice to the defendant that its grantor had no title to the premises and because it did not purport to convey the fee.

The defendant introduces in evidence a Tax deed by which the Board of Supervisors of Gila County conveyed to James and Dodge, defendant's grantors, all the right, title and interest, which the Territory of Arizona had acquired in the property which is the subject of this suit, by reason of certain proceedings therein set forth. An inspection of this last mentioned deed shows that said deed and all prior proceedings leading up to it were based upon an alleged assessment for taxes for the year 1883, to wit, taxes levied upon a mortgage assessed by the assessor of said Gila County, Arizona, in said year 1883 against the plaintiff herein; one of the recitals in said deed of said Board of Supervisors is as follows:

"That said property was assessed for the final year, commencing on the first Monday in March, 1883, for Territorial County taxes, as follows: 'Work, James H., mortgages on O'Dougherty and Big Johnny Mines, Globe Mining District, $25,000.00, taxes, $725.00, per cent. added $36.25, fees $16.67, penalty $1.00, $807.92, being liable to $807.92, the amount of taxes and costs due on the third Monday of December, 1883.'"

This tax deed shows upon its face that it was absolutely void and conveyed no title to James and Dodge.

It is admitted that at the time the assessment was made, J. Henry Work was and had been for twenty-five years bona fide resident of New York.

This mortgage was not taxable in Arizona because it was owned by a non-resident.

Mortgages are only taxable in State of the owner's residence.

Jack vs. Walker, 79 Fed. Rep., 142.
Holland vs. Commissioners, etc. (Mont.) 39 Pac., 576.
Cleveland, etc. vs. Pennsylvania, 82 U. S., 300, 21 L. Ed., 179.

Even if the tax were not void, the deed shows on its face that the two mines, two separate parcels of land were sold together and not in separate parcels and were taxed together as one group and not in separate parcels.

The deed does not contain any recital of the

name of the person, firm, company, or corporation assessed, and from whom the taxes were due.

It is admitted in the agreed statement of facts that the United States patent was not issued for the mines in question until in January, 1885, and in 1883, when the tax was attempted to be levied unpatented mining claims were not subject to taxation in the Territory of Arizona.

For these, and various other reasons therefore, this tax deed is absolutely void on its face, and conveyed no title whatever to James and Dodge.

This point is not seriously contested either by defendant or by the court below.

It is settled law in this Court that a deed founded on a sale for taxes which on its face is absolutely void, does not support adverse possession under a Statute of Limitations.

Redfield vs. Parks, 132 U. S., 293.

But not only is the deed void, on account of informalities, it shows on its face that it does not attempt to convey the fee, that the only interest the Board of Supervisors attempted to convey was the interest that the mortgagee had before foreclosure in the premises.

It is not denied that under the Laws of Arizona a mortgage of real property conveyed no title whatever to the mortgagee; he has merely a lien upon the property. A deed attempting to convey this alleged interest conveyed nothing.

Defendant argues that its claim is based, not on the deed *to* James and Dodge, but on the deed *from* James and Dodge to it; that such deed being sufficient in form is a sufficient basis to sup-

port its claim under the five years Statute; that the fact, that reference is made to the invalid deed and that it is stated that the property conveyed is the same as was conveyed to its grantors by such invalid deeds is immaterial, because the only question is whether the deed under which it claims is sufficient in form. If it is, its effect is not destroyed by reason of the grantee knowing or having notice of the fact that the grantor had no title or by its lack of good faith.

We believe that this view is erroneous.

It is true that a deed, valid on its face, is sufficient for the purpose of the Statute, even if it could be impeached by evidence aliunde (Elder vs. Wood, 208 U. S., 226). But it does not follow from this that the result is the same when the grantee has actual knowledge or notice that this grantor has absolutely no title to the premises he attempts to convey. If a deed, void on its face, on account of some legal informality, is not sufficient for the purposes of the Statute, because knowledge of said legal defect is imputable to the grantee and he must be presumed to know that no title passed to him, how can it be said that a deed can be sufficient where there is actual knowledge of the defect of title? If this contention is correct, this defendant could have asked any of its laborers or miners to execute to it a deed of this property and having done so, might profit by its own wrong. By adopting defendant's contention the same result would follow as was condemned by this Court in Bradshaw vs. Ashley, 180 U. S., 59,

> "a party might wrongfully intrude and en-
> "ter upon the possession of another, as a pure

"intruder, and yet make a claim of title under "a deed which manifestly conveyed none and "which the party could not in good faith have "supposed conveyed title.

"Such entry could not be excused by any "subterfuge of that kind."

The correct rule is well expressed in Saxton vs. Hunt, 20 N. J. L., 487, 493:

"A party who gets up an adverse possession "under color of title must act bona fide, or "in other words, must be honest. He must be-"lieve his deed to be valid in law and that it "conveys to him a good title to the land, al-"though it may turn out that another person "has a better title."

But the deed in question is also insufficient because, taken as a whole, it does not purport to convey the fee. It expressly says that the property sold, bargained and quitclaimed is the same property which was conveyed by the Board of Supervisors of Gila County to defendant's grantors and as we have tried to show the property so conveyed was not the fee but merely the mortgage held by Work. In order successfully to invoke the Statute, the defendant must "claim" under the deed and no one can claim under a deed a greater interest or title than the deed conveys.

III.

The ten years Statute of Limitations (Section 2938 Nev. Stat., 1901) does not apply: (a) because its operation is restricted to the recovery of lands held without deed, and (b) because no such limitation was in existence when plaintiff's cause of action accrued and the statute must be given a prospective operation.

The caption of the section is "Recovery of lands held without deed."

The defendant, as appears from the agreed statement has entered on the premises, claiming under the deed to it from James and Dodge. Section 2941 Revised Statutes of 1901, defines adverse possession required under the statute as possession "commenced and continued under a claim of right inconsistent with and hostile to the claim of another." If defendant's possession was adverse it was on account of its having accepted and recorded such deed, it was the only "claim of right" it made. If, as we have tried to show in the preceding point, such deed was insufficient to set the five years Statute in motion, possession and claim of title under it, did not enable the defendant to invoke any Statute of Limitation.

The exact point was decided by this Court in Redfield vs. Parks, 132 U. S., 239. Possession under the tax deed in that case had been held by the Court below to bar plaintiff's right of action both under the two years Statute of Limitation, which refers to tax deeds, and the section which generally limits the time to bring action to re-

cover real property to seven years. This Court held that the decision was erroneous in regard to the defense under both statutes.

b. The limitation was introduced for the first time in the revision of 1901.

The Court below adheres to the opinion expressed in former cases that statutes of this character must be given a prospective operation in the absence of the existence of a contrary intention of the Legislature. But it claims that in this case, such intention existed because the operation was postponed from the date of its passage to September 1st, 1901, a period of five months.

If such delay had been restricted to the section by which a new limitation was introduced, the argument might have had some force. But the same provision was made as to other sections, which merely re-enacted existing limitations, and as a matter of fact, it will be seen that the operation of the greater part of the revision was postponed to that date. Under these circumstances, the validity of the argument seems to be doubtful.

IV.

If the Statute is intended to have a retrospective effect, it would be unconstitutional.

It is admitted that a statute making no provision for a period within which existing causes of action can be asserted, would be unconstitutional. No such period beginning after the statute goes

into effect is provided by the statute. It is claimed by the Court below that it is sufficient if a period is given after the statute is passed and before it goes into effect. We admit that there is a conflict of authority on this point. But we believe that the reasoning of the Court of Appeals of New York in Gilbert vs. Ackerman, 159 N. Y., 118, and of Judge Cooley in Price vs. Hopkins, 13 Mich., 318, clearly show that the better rule is that such period must begin after the statute takes effect and that it would be unjust to impute to the parties in interest, especially when the limitation is first created by the statute, knowledge not of what the law is, but of what it will be some time in the future.

POINT V.

The judgment appealed from should be reversed with costs and the judgment should be directed for the plaintiff.

Respectfully submitted,

A. L. PINCOFFS,
of Counsel for Appellant.

Supreme Court, U. S.
FILED.
SEP 17 1913
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 46.

JAMES H. WORK, APPELLANT,

vs.

THE UNITED GLOBE MINES, A CORPORATION.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF ARIZONA.

BRIEF OF APPELLEE.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 46.

JAMES H. WORK, APPELLANT,

vs.

THE UNITED GLOBE MINES, A CORPORATION.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF ARIZONA.

BRIEF OF APPELLEE.

Statement.

This is an appeal from the judgment of the Supreme Court of the Territory of Arizona, affirming the judgment rendered in favor of appellee by the District Court of the Fifth Judicial District of the Territory of Arizona, in and for the County of Gila.

The action was brought by James H. Work, appellant herein, against The United Globe Mines, a corporation, to quiet title to two patented mines situate in the Globe Mining District, Gila County, Arizona.

The complaint alleges that plaintiff is now, and has been, continuously, for more than twenty-five years last past, a resident of the city of New York, State of New York, and that the defendant is a corporation duly incorporated under and by virtue of the laws of ——, and has a duly appointed legal agent residing at Globe, Gila County, Arizona Territory (Rec., p. 1).

The complaint further states in substance, that plaintiff is, and for a long period of time has been, the owner of two patented mines known as the Big Johnny and O'Dougherty, particularly described in the complaint (Rec., p. 1); that plaintiff claims title in fee thereto; that defendant claims an estate or interest therein adverse to plaintiff; that the claim of defendant is without right, and concludes with a prayer that defendant may be required to set forth the nature of *his* claim, and that all adverse claims of defendant may be determined (Rec., p. 2).

Defendant, in its answer (Rec., p. 3), alleges that it is a corporation duly organized and existing under and by virtue of the laws of the State of New York, and having its principal place of business near the town of Globe, Gila County, Arizona Territory, and denies that plaintiff is the owner of the premises described in the complaint (Rec., p. 4).

The answer further alleges that defendant is the owner of and in possession of, and entitled to the possession of, the premises described in the complaint (Rec., p. 4).

The answer then proceeds as follows:

> "That defendant for more than five years before the commencement of this action, has been in the actual, continuous, uninterrupted, peaceable, exclusive, open, notorious, hostile and adverse possession of said premises, and has been cultivating, using, enjoying and working the same, paying taxes thereon, and holding and claiming the same and the title thereto adversely to plaintiff and all the world, under a deed from William E. Dodge and D. Willis James conveying said premises to this defendant, which

deed is dated January 31st, A. D., 1893, and which said deed was duly recorded on the 17th day of February, A. D., 1893, in the office of the County Recorder of Gila County, said Territory, in book 3 Deeds of Mines, at page 299;

"And defendant alleges that the cause of action, if any, stated in the complaint herein, did not accrue within five years next before the commencement of this action." (Rec., p. 4.)

Defendant, for a further defense, pleaded the ten-years statute of limitations.

The answer concluded with a prayer that the defendant be adjudged and decreed to be the owner of and entitled to the possession of said O'Dougherty and Big Johnny mines, and for such other or further relief as may be just and equitable in the premises (Rec., p. 4).

The case was submitted to the trial court upon an agreed statement of facts (Rec., p. 18).

From the "Certificate of Agreed Statement of Facts" it appears that the Supreme Court of the Territory of Arizona took the facts as agreed to by the parties and made them the statement of facts on appeal (Rec., p. 76).

From this statement of facts it appears, among other things:

"That defendant is a corporation duly organized and existing under and by virtue of the laws of the State of New York, and having its principal place of business near the town of Globe, in the Gila County, Arizona Territory (Rec., p. 21).

"That prior to the 31st day of January, 1893, the defendant had performed each and every of the acts required to be performed by the laws of Arizona in order to entitle it to transact business in the Territory of Arizona, and on said last mentioned date was and ever since has been competent and duly qualified to transact business in this Territory, and to take, receive, acquire, possess, own and hold any and all kinds of property therein, and to sue and be sued; (Rec., p. 21).

"That on January 31, 1893, William E. Dodge and D. Willis James, made, executed, and delivered to defendant a deed conveying to defendant certain lands and premises situated in the Globe Mining District, Gila County and Territory of Arizona, known and designated as the O'Dougherty and Big Johnny mines, which deed was recorded in the office of the Recorder of said county on the 17th day of February, A. D. 1893, in book 3, Deeds to Mines, page 299, a certified copy of which deed is hereto attached marked Defendant's Exhibit A (Rec., p. 21).

"That upon the execution and delivery of said deed to defendant, James and Dodge, the said grantors of defendant, delivered possession of said premises to defendant and defendant immediately went into possession thereof and put men to work on said mining premises, and began working, mining and developing same; that ever since the date of said deed of January 31st, 1893, and up to and including the time when this action was commenced on November 16, 1903, defendant has been in the actual, continuous, uninterrupted, exclusive, open, notorious, hostile and adverse possession of said premises, working, using, developing, cultivating and enjoying the same. (Rec., p. 23.)

"That ever since said conveyance to defendant on January 31st, 1893, defendant has been claiming to own the said O'Dougherty and Big Johnny mines and has claimed title thereto under said deed of January 31st, 1893, and during all of said time has claimed and held the said premises adversely to plaintiff and all the world; (Rec., p. 23).

"That in the year 1893 and in each and every year since 1893, defendant has paid the taxes on said mines"; (Rec., p. 23).

The granting clause of the deed from Dodge and James to defendant, above referred to, reads as follows:

"That the said parties of the first part, for and in consideration of five hundred thousand dollars of the United States of America to them in hand paid by the said party of the second part, the receipt

whereof is hereby acknowledged, have granted, bargained, sold, remised, released and forever quit-claimed and by these presents do grant, bargain, sell, remise, release and forever quit-claim unto the said party of the second part and to its successors and assigns all the following mentioned and described mineral properties, mining claims and millsites with the appurtenances thereto belonging, situate, lying and being in the Globe Mining District, Gila County (formerly Pinal County), Territory of Arizona, and more particularly described as follows:" etc. (Rec., p. 24).

The habendum of the deed is as follows:

> "To have and to hold all and singular the said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part, its successors and assigns forever". (Rec., p. 28).

Counsel for appellee is unable to find in the record any statement relative to defendant's grantors having "obtained said premises from the defendant," and suggests that the statement on page 6 of appellant's brief, in next to the last paragraph, is erroneous in that particular.

ARGUMENT.

I.

A foreign corporation which had complied with the laws of Arizona governing such corporations, and was continuously engaged in doing business therein during the entire period required to bar this action, and during all that time had a resident agent there upon whom process could be served, can avail itself of the statute of limitations of Arizona and acquire title to real estate therein by adverse possession.

Sidway *vs.* Missouri Land & Live Stock Co., 187 Mo., 649, 673.
Thompson *vs.* Texas Land & C. Co., 24 S. W., 856.
U. S. Express Co. *vs.* Ware, 20 Wall. (U. S.), 543.
Railway *vs.* Greene, 216 U. S., 400.
Voliva *vs.* Richmond Cedar Works, 152 N. C., 656.
Southern Ry. Co. *vs.* Mayes, 113 Fed., 84.
Wehrenberg *vs.* N. Y., N. H. & H. R. Co., 108 N. Y. Supp., 704.
McCabe *vs.* Illinois Cent. Ry. Co., 13 Fed., 827.
Turcott *vs.* Yazoo & M. V. R. Co., 101 Tenn., 102; 40 L. R. A., 768.
O'Conner *vs.* Ætna Life Ins. Co., 67 Neb., 122.
Wall *vs.* Chicago & N. W. R. Co., 69 Ia., 498, 501.
Tiller *vs.* St. Louis & S. F. R. Co., 189 Fed., 994.
Lawrence *vs.* Ballou, 50 Cal., 258.
Colonial & U. S. Mtg. Co. *vs.* Northwest Thresher Co., 14 N. D., 147; 70 L. R. A., 814.

The predominating judicial opinion is that a corporation, although created by the laws of another State, should be deemed to be present in the State of the forum if it is there

for the purpose of its business, in compliance with the laws of the State in that behalf, so that it is subject to the process of the State, and that such a presence will avail the foreign corporation under a plea of limitations.

25 Cyc., 1243, and cases cited.

The only courts in which the doctrine invoked by the appellant is upheld are those of New York, Kansas, Wisconsin, and Nevada.

The cases cited by counsel for appellant on page 7 of appellant's brief, upholding what is termed the "minority doctrine," rely for support upon the principle that a corporation is a citizen of that State under whose laws it is created, and has no legal existence elsewhere, and must therefore be regarded as a non-resident of any other State, within the meaning of the statute of limitations. The courts of these States refuse to consider that the presence in the State of a statutory agent of the foreign corporation, upon whom the statute authorizes summons to be served, in any way affects the suspension of the running of the statute of limitations in such cases. Their position is logically untenable and the reading of these decisions only serves to emphasize the reasonableness of the decisions upholding the contrary rule.

In the New York case of Tioga R. R. Co. *vs.* Blossburg, etc., R. Co., 20 Wall., 137, in which this court felt constrained to follow the construction placed upon the statute of New York by certain decisions of the New York Court of Appeals holding that a foreign corporation could not avail itself of the statute of limitations of that State, Justice Bradley, in delivering the opinion of the court, said:

> "These decisions upon the construction of the statute are binding upon us, *whatever we may think of their soundness on general principles*" (italics ours).

In the same case Justice Miller, in a dissenting opinion, said:

> "The liability to suit where process can at all times be served must, in the nature of things, be the test of the running of the statute."

And this is the principle recognized in the cases above cited as determining the right of foreign corporations to invoke the benefits of the statute of limitations.

Since the decision of the case of Olcott *vs.* Tioga R. R. Co., 20 N. Y., 210, cited by appellant, the New York statute has been amended. The statute is quoted at length in the opinion in the recent case of Wehrenberg *vs.* New York, N. H. & H. R. Co., 108 N. Y. Supp., 704, in which the court held that a foreign corporation having a duly designated agent within the State might rely upon the statute of limitations of New York.

The question of the right of a foreign corporation to invoke the statute of limitations of the State of Nebraska was before this court in the case of The U. S. Express Co. *vs.* Ware, 20 Wall., 543. The court affirmed the decision of the lower court, holding that the law was correctly stated, in the following instruction:

> "If you find that the defendant had a managing agent within the State at the time of the loss, then the statute began to run from that time, and if it had such agent in the State for the next five years after the loss, then this action is barred, but otherwise it is not. In other words, to bar this action, the plaintiff must have been able for five years before suit brought, to have sued the defendant in this State, and compelled it to answer the suit by a service upon the managing agent therein. The time during which the plaintiff is thus disabled from suing by reason of defendant having no managing agent in this State is not to be counted as part of the five years' limitation."
>
> The U. S. Express Co. *vs.* Ware, 20 Wall., 543.

As already stated, the case was submitted to the trial court upon the agreed statement of facts. The Arizona statute relative thereto is as follows:

"The parties may in any case submit the matter in controversy between them to the court upon an agreed statement of facts made out and signed by them or counsel, and filed with the clerk, upon which judgment shall be rendered as in other cases, and in such case the statement so agreed to and signed, and certified by the court to be correct, and the judgment rendered thereon, shall constitute the record of the cause."

Par. 1391, Civ. Code Ariz., 1901.

Looking at the facts in the present case, it is admitted:

"That prior to the 31st day of January, 1893, the defendant had performed each and every of the acts required to be performed by the laws of Arizona in order to entitle it to transact business in the Territory of Arizona, and on said last-mentioned date was and ever since has been competent and duly qualified to transact business in this Territory, and to take, receive, acquire, possess, own and hold any and all kinds of property therein, and to sue and be sued; (Rec., p. 21).

It was also admitted that defendant ever since January 31, 1893, has been in the *actual* possession of the premises, working, using, developing, cultivating, and enjoying the same (Rec., p. 23). It appears that the appellee has been working the mines in dispute ever since January 31, 1893.

The Arizona statute relative to foreign corporations in force in and prior to 1893 provides:

"347. (Sec. 1.) Any company incorporated under the laws of any other State or Territory, for any enterprise, business, pursuit or occupation, proposed to be carried on, or the principal office or place of business is proposed to be located, within this Territory, shall make and file certified and duly authenticated copies of their articles of incorporation, with the secretary of this Territory, and the county recorder of the county in which its business or principal office is located."

Par. 347, Civ. Code Ariz., 1887.

"348. (SEC. 2.) It shall be the duty of any association, company or corporation organized or incorporated under the laws of any other State or Territory or foreign country for the purposes of engaging in or carrying on any enterprise, business, pursuit or occupation, or acquiring, holding or disposing of any property within this Territory, to file with the secretary of this Territory and the county recorder of the county in which such enterprise, business, pursuit or occupation is proposed to be located, or is located, the lawful appointment of an agent, upon whom all notices and processes, including service of summons, may be served, and when so served shall be deemed taken and held to be a lawful personal service on such association, company or corporation for all purposes whatsoever."

Par. 348, Civ. Code Ariz., 1887.

"350. (SEC. 4.) The appointment of such agent shall be embodied in a resolution duly adopted by such company, and shall be signed by the president, manager or secretary thereof. All such agents shall be *bona fide* residents of the county in which their appointments shall be filed, and the full name and residence of each agent shall be stated in the resolution appointing him."

Par. 350, Civ. Code Ariz., 1887.

"352. (SEC. 6.) Upon complying with the provisions of this chapter, (any) association, company or corporation organized or incorporated under the laws of any other State or Territory, or any foreign country, shall be qualified and competent to take, receive and acquire, either by purchase or by operation of law, and possess, own, hold and dispose of any and all kinds of real and personal property within this Territory, and to prosecute and defend and to appear, especially and generally, in any action in any court of or within this Territory, and shall have, hold and enjoy, except as hereinafter provided, the same rights and privileges as are now held and enjoyed, or that may be hereafter held and enjoyed by any association, company or corporation organized or incorpo-

rated under the laws of this Territory: *provided*, no association, company or corporation organized or incorporated under the laws of any foreign country, shall take, receive, acquire, possess, hold or own, at any one time, more than three hundred and twenty (320) acres of real estate, exclusive of mines and mineral lands and land necessary or convenient for milling, smelting, reducing or working ores, or for manufacturing or commercial purposes."

Par. 352, Civ. Code Ariz., 1887.

This was the law in force in Arizona when The United Globe Mines took adverse possession of the premises in dispute on January 31, 1893, claiming title thereto under the deed from James and Dodge of that date (Rec., pp. 21-23).

The Revised Statutes of 1901 imposed no additional requirements upon foreign corporations seeking to do business in the Territory of Arizona except that a copy of the articles of incorporation is to be filed with the county recorder, and a resident agent is to be appointed in each county in the Territory in which business is carried on, and publication of the articles of incorporation is required.

Pars. 909, 910, Civ. Code Ariz., 1901.

Paragraph 913 of the Civil Code of Arizona of 1901 is identical with paragraph 352 of the Civil Code of 1887, above quoted. It becomes unnecessary, however, to specify further the acts necessary to be performed by The United Globe Mines in order to comply with the requirements of the statute, as counsel for plaintiff below saw fit to concede and admit by the agreed statement of facts that *each and every act required of the defendant* was performed by defendant, thus withdrawing the question of the defendant's compliance with the statute from the consideration of the court, and the Supreme Court on appeal adopted that statement as its statement of facts (Rec., p. 76).

From the facts and the statutes above set forth, the conclusion irresistibly follows that The United Globe Mines pos-

sessed the same rights and privileges then held and enjoyed by domestic corporations in Arizona. Domestic corporations unquestionably possessed the right to rely upon the statute of limitations and could acquire title to real estate by adverse possession.

Paragraph 2932, Civ. Code Ariz., 1887, provides:

> "In construction of the statutes of this Territory, the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the legislature, that is to say: * * * The word 'person' includes a corporation as well as a natural person."
>
> Par. 2932, Civ. Code Ariz., 1887.

A domestic corporation can rely upon the defense of the statute of limitations and acquire title by adverse possession.

> Harpending *vs.* Reformed Prot. Dutch Church, 16 Pet., 455.

It appears that throughout the period of limitation the appellee was actually in Arizona engaged in business, and during all said time had an agent upon whom process could be served. There never has been a time since the corporation took possession of the premises in dispute when plaintiff could not have brought suit against it and obtained personal service and a general judgment if he recovered. The appellant at all times during the period of limitation could have instituted suit against appellee in Arizona and obtained service of process upon its lawfully appointed agent. Under these circumstances, according to the decided weight of authority, defendant is not, in contemplation of law, a non-resident within the meaning of the statute of limitations.

> Sidway *vs.* Missouri Land & Live Stock Co., 187 Mo., 649, 673.
>
> Voliva *vs.* Richmond Cedar Works, 152 N. C., 656.
>
> Wall *vs.* Chicago & N. W. R. Co., 69 Ia., 498, 501.

The contention of appellant that The United Globe Mines was a non-resident is wholly inconsistent with the fact that the defendant, ever since January 31, 1893, has been in the *actual* possession of the premises (Rec., p. 23).

The overwhelming weight of authority supports the decision of the Supreme Court of Arizona holding that The United Globe Mines, a foreign corporation, could acquire title to land by adverse possession for the statutory period. Furthermore, the construction of this statute by the Supreme Court of the Territory of Arizona is of great, if not controlling, weight.

Lewis *vs.* Herrera, 208 U. S., 309.

II.

"**Every suit instituted to recover real property as against any person having peaceable and adverse possession thereof, cultivating, using, or enjoying the same, and paying taxes thereon, if any, and claiming under a deed or deeds duly recorded, shall be instituted within five years next after the cause of action shall have accrued, and not afterwards: PROVIDED, That this section shall not apply to any one in possession of land who, in the absence of this section, would deraign title through a forged deed: PROVIDED, FURTHER, That no one claiming under a forged deed, or a deed executed under a forged power of attorney, shall be allowed the benefits of this section.**"

Par. 2937, Civ. Code Ariz., 1901.
Par. 2299, Civ. Code Ariz., 1887.

This statute was adopted from the State of Texas. Article 3342, R. S. Texas, 1895, reads as follows:

"EVERY SUIT TO BE INSTITUTED TO RECOVER REAL ESTATE AS AGAINST ANY PERSON HAVING PEACEABLE AND ADVERSE POSSESSION THEREOF, CULTIVATING, USING OR ENJOYING THE

SAME AND PAYING TAXES THEREON, IF ANY, AND CLAIMING UNDER A DEED OR DEEDS DULY REGISTERED, SHALL BE INSTITUTED WITHIN FIVE YEARS NEXT AFTER THE CAUSE OF ACTION SHALL HAVE ACCRUED, AND NOT AFTERWARD. PROVIDED, THAT THIS ARTICLE SHALL NOT APPLY TO ANY ONE IN POSSESSION OF LAND, WHO IN THE ABSENCE OF THIS ARTICLE WOULD DERAIGN TITLE THROUGH A FORGED DEED. PROVIDED FURTHER, THAT NO ONE CLAIMING UNDER A FORGED DEED, OR DEED EXECUTED UNDER A FORGED POWER OF ATTORNEY, SHALL BE ALLOWED THE BENEFITS OF THIS ARTICLE."

Art. 3342, R. S. Texas, 1895.
Cook *vs.* Spencer, 91 S. W., 813.
Clark *vs.* Asbury, 134 S. W., 286.

"'Peaceable possession' within the meaning of this title, is such as is continuous, and not interrupted by adverse suit to recover the estate."

Par. 2943, Civ. Code Ariz., 1901.
Par. 2303, Civ. Code Ariz., 1887.

"'Peaceable possession' within the meaning of this chapter, is such as is continuous and not interrupted by adverse suit to recover the estate."

Art. 3348, R. S. Texas, 1895.

"'Adverse possession,' is an actual and visible appropriation of the land, commenced and continued under a claim of right inconsistent with and hostile to the claim of another."

Par. 2944, Civ. Code Ariz., 1901.
Par. 2304, Civ. Code Ariz., 1887.
Art. 3349, R. S. Texas, 1895.

"Whenever in any case the action of a person for the recovery of real property is barred by any of the provisions of this title the person who pleads and is entitled to the bar shall be held to have full title precluding all claims."

Par. 2302, Civ. Code Ariz., 1887.
Par. 2942, Civ. Code Ariz., 1901.

"Whenever in any case the action of a person for the recovery of real estate is barred by any of the

provisions of this chapter, the person having such peaceable and adverse possession shall be held to have full title, precluding all claims."

Art. 3347, R. S. Texas, 1895.

Paragraph 2299, Civil Code of 1887, which was the statute in effect in Arizona in 1893, when defendant's adverse possession commenced, and which was re-enacted as paragraph 2937 of the Revised Statutes of 1901, the statute in effect at the time this action was commenced, was adopted from Texas, and as seen by a comparison with the statutes set forth above, is identical with article 3342, Revised Statutes of Texas. This statute had been interpreted by the Supreme Court of Texas prior to its adoption in Arizona. Our legislature is therefore presumed to have adopted such interpretation, and the Texas decisions construing the statute control.

Goldman *vs.* Sotelo, 8 Ariz., 85.

Henrietta Mg. Co. *vs.* Gardner, 173 U. S., 123.

Richmond & A. R. Co. *vs.* Tobacco Co., 169 U. S., 311.

Metropolitan R. R. Co. *vs.* Moore, 121 U. S., 558.

The facts establish a performance of every requisite of the five-years statute of limitations (Rec., p. 23). It appears therefrom that the deed from James and Dodge to appellee was recorded February 17, 1893, and that for more than five years prior to the institution of plaintiff's suit, defendant held peaceable and adverse possession of the lands in dispute, working, using and enjoying the same, claiming title thereto under that duly recorded deed, and paying all taxes due thereon. This was sufficient to vest the title in the defendant.

Stubblefield *vs.* Hanson, 94 S. W., 406.

Long *vs.* Thompson & Tucker Lumber Co., 140 S. W., 501.

Clark *vs.* Asbury, 134 S. W., 286.

ANY INSTRUMENT IN THE FORM OF A DEED, AND NOT VOID UPON ITS FACE, IS SUFFICIENT AS THE BASIS OF THE FIVE YEARS STATUTE OF LIMITATION. IT IS ENTIRELY IMMATERIAL ON A QUESTION OF LIMITATIONS AND FOR THE PURPOSE OF THE DEFENSE OF THE FIVE-YEARS STATUTE OR THE ASSERTION OF TITLE BY ADVERSE POSSESSION THEREUNDER WHAT TITLE APPELLEE'S GRANTORS HAD TO THE LAND OR WHETHER THEY OWNED ANY INTEREST IN IT AT ALL.

Hunton *vs.* Nichols, 55 Tex., 217, 230.
Fry *vs.* Baker, 59 Tex., 404.
Harris *vs.* Bryson & Hartgrove, 34 Tex. Civ. App., 532.
Brown *vs.* O'Brien, 41 Tex. Civ. App., 459.
Midkiff *vs.* Stephens, 9 Tex. Civ. App., 411.
Harris *vs.* Wells, 85 Tex., 312.
McDonough *vs.* Jefferson Co. *et al.*, 79 Tex., 535.
Goldman *vs.* Sotelo, 8 Ariz., 85.

The deed under which defendant claims title to the premises in dispute, and which is the basis of its title under the five-years statute of limitations, is the deed *from* James and Dodge to The United Globe Mines (Rec., p. 24).

(NOTE.—On page 24 of the printed record, in the fifth line, the name of the grantee in this deed is erroneously printed as "The United *States* Globe Mines." This has been corrected by stipulation of counsel, filed herein, to read "The United Globe Mines," as in the original record.)

This deed is *good upon its face*, and purports to convey the O'Dougherty and Big Johnny mines. It therefore is sufficient, under the Texas decisions above cited, as the basis of the statute of limitations of five years.

> "A party selling need not have title, and, in fact, may be without title; but, if the deed is not void on its face, it will support the statutes of limitations of five years. McDonough *vs.* Jefferson County, 79 Tex., 539; 15 S. W. Rep., 490; Hunton *vs.* Nichols, 55 Tex., 218, 230."
>
> **Harris *vs.* Wells, 85 Tex., 312.**

The defects which will render the deed insufficient as the basis of the five-years statute are only those which are apparent in the deed itself, solely from an inspection of that particular instrument—not those which can only be shown by resort to extrinsic evidence. Provided an instrument is in form a deed and purports to convey the property in dispute to defendant, it is sufficient to support a claim of title by limitation under the five-years statute, unless from an inspection of the deed itself—tested solely by itself and without resort to extraneous evidence—it appears that the deed is void.

The bar of the statute will not be prevented because a deed is inoperative by reason of extraneous circumstances.

Schleicher *vs.* Gatlin, 85 Tex., 270.

In the deed under which appellee claims title by adverse possession—the deed from James and Dodge (Rec., p. 24)—the language is: "The said parties of the first part * * * have granted, bargained, sold, remised, released and forever quit-claimed and by these presents do grant, bargain, sell, remise, release and forever quit-claim unto the said party of the second part and to its successors and assigns all the following mentioned and described mineral properties, mining claims and millsites," etc. (Rec., p. 24). The instrument is thus characterized as a conveyance of the land, and its nature is not changed by the subsequent reference to the supervisors' deed.

Kirby *vs.* Pitchfork L. & C. Co., 129 S. W., 1151.

Nor does it appear from this deed from James and Dodge to appellee what interest was conveyed by the supervisors' deed.

Under the repeated decisions of the Texas courts any defect which does not appear on the face of the instrument itself will not prevent the deed from being sufficient as the basis for title by limitation under the five-years statute.

While the deed from the Board of Supervisors to James and Dodge is found in the agreed statement of facts, it was never put there as evidence in support of the defendant's title under the five-years statute of limitations.

An instrument can never be said to be void *on its face* when evidence *aliunde* is necessary to impeach it. Under the Texas cases cited the deed from James and Dodge to the appellee, under which it claimed title to the premises in dispute, is sufficient as the basis of title by limitation under the five-years statute.

On February 17, 1893, the date when the deed from James and Dodge to defendant was recorded (Rec., p. 21), the five-years statute commenced to run against the plaintiff and in favor of the defendant.

Van Sickle *vs.* Cattel, 75 Tex., 404.

GOOD FAITH IS NEVER ESSENTIAL UNDER THE FIVE OR TEN YEARS STATUTES OF LIMITATION.

Referring to the five-years statute of limitations the Supreme Court of Texas said:

> "When the requirements of the law are fulfilled, knowledge that the superior title is in another does not affect the right of the occupant of the land to acquire title under that statute."
>
> McDonough *et al. vs.* Jefferson County *et al.*, 79 Tex., 535.

In another case it was held by the same court that the statute of limitations of ten years does not involve the question of good faith in the possessor.

Kinney *vs.* Vinson, 32 Tex., 126.

The language of the Supreme Court of Texas, quoted above, sufficiently answers the contention of appellant that notice of a defect in the record title would prevent the appellee from claiming under the deed from Dodge and James.

Appellant furnishes an apt illustration of a situation entirely possible under the Arizona or Texas statutes. Assume, as suggested by appellant, that one of defendant's miners—a stranger to the title—*had* executed to defendant, at its request, a deed of this property, which the defendant had caused to be duly recorded. Beyond a doubt, if defendant had thereupon entered into possession of the premises, claiming title thereto under such recorded deed, and had maintained peaceable and adverse possession of the land, working, using, and enjoying it, and paying taxes thereon, for the full period of five years before the institution of any suit by the plaintiff, the operation of the statute of limitations would have vested the fee in the defendant. In the words of the statute, it would be held to have full title precluding all claims. As declared by this court in the case of Tioga R. R. Co. *vs.* Blossburg, etc., R. Co., 20 Wall., 137:

> "Statutes of limitation are in their nature arbitrary. They rest upon no other foundation than the judgment of a State as to what will promote the interests of its citizens. Each determines such limits and imposes such restraints as it thinks proper."

The case of Bradshaw *vs.* Ashley, 180 U. S., 59, cited on page 12 of appellant's brief, did not involve the question of the sufficiency of a deed relied upon solely as the basis of title under a statute of limitations. This court was considering in that case whether the claim of title made by a defendant in ejectment was such that the plaintiff therein, in order to prevail, was required to prove title in fee.

The cases above cited establish the rule that it is absolutely immaterial under the Texas and Arizona statutes of limitation of five years who the claimant's grantor was or what title he had, or whether he had any, or what knowledge or notice he or the claimant had. The claimant in such cases is not concerned with the record title. By placing the deed under which he claims title of record and holding possession thereunder he initiates a new and independent title. He

can safely rely upon the fact that his peaceable and adverse possession of the land, accompanied by a claim of title under his deed and the payment of taxes for the continuous period of five years, will, by virtue of the statute, result in his acquisition of title in fee to the land.

III.

"Any person who has a right of action for the recovery of any lands, tenements or hereditaments against another having peaceable and adverse possession thereof, cultivating, using and enjoying the same, shall institute his suit therefor within ten years next after his cause of action shall have accrued, and not afterward."

Par. 2938, Civ. Code Ariz., 1901.
Art. 3343, R. S. Texas, 1895.
Kinney *vs.* Vinson, 32 Tex., 126.
Bruce *vs.* Washington, 80 Tex., 368.
Carlock *vs.* Willard, 149 S. W., 363.
Ball *vs.* Filba *et al.*, 153 S. W., 685.
McGregor *vs.* Thompson, 7 Tex. Civ. App., 32.

The facts in the case are that ever since the date of said deed of January 31, 1893, and up to and including the time when this action was commenced on November 16, 1903, defendant has been in actual, continuous, uninterrupted, exclusive, open, notorious, hostile, and adverse possession of the premises in dispute, working, using, cultivating, and enjoying the same (Rec., p. 23).

Since "peaceable possession" is defined in the Arizona statute quoted above as such as is continuous and not interrupted by adverse suit to recover the estate, and "adverse possession" is therein defined as an actual and peaceable appropriation of the land, commenced and continued under a claim of right inconsistent with, and hostile to, the claim

of another, the facts establish appellee's title by adverse possession under the ten-years statute of limitation. As counsel for plaintiff below admitted that defendant's possession was "adverse," it becomes immaterial how it became so.

By the expression "under a claim of right" it is not meant that the party in possession must expressly make any claim to ownership of the land or assert his claim otherwise than by a peaceable, hostile, exclusive, and continuous appropriation of the land. One may enter upon land as a naked trespasser, knowing that he has no title whatever and intending to acquire title by limitation of ten years, and if he continues in peaceable, adverse possession for ten years, cultivating, using, and enjoying the same, he will thereby acquire title to the land. It is the character of his possession and not the claim of title or ownership which he may assert that is made the basis of the operation of the statute of limitations.

Cox *et al. vs.* Sherman Hotel Co., 47 S. W., 808.
Link *vs.* Bland, 43 Tex. Civ. App., 519.

The facts in the present case admit of no doubt that appellee's possession was under a claim of right, for not only has his possession been of the character required by the statute, but ever since January 31, 1893, appellee has been claiming to own the lands, and has claimed and held them adversely to plaintiff and all the world (Rec., p. 23). If the possessor does in fact claim the land against the world, the statute is set in motion.

Wiess *vs.* Goodhue, 46 Tex. Civ. App., 142.

While the ten-years statute is available to one in adverse possession not claiming under a deed, the statute does not deprive one claiming under a deed of its benefits.

The facts are sufficient to establish appellee's title by adverse possession under the ten-years statute of limitations.

THE EFFECT OF THE TEN-YEARS STATUTE OF LIMITATIONS IS TO VEST IN THE POSSESSOR WHO HAS COMPLIED WITH THE STATUTE OF LIMITATIONS A FULL AND COMPLETE TITLE TO THE LAND.

Burton's Heirs *vs.* Carroll *et al.*, 96 Tex., 320.
Mitchell vs. Schofield, 140 S. W., 254.

IV.

The ten-years statute of limitations of Arizona took effect September 1, 1901, and operated on causes of action then existing.

Unless suit to enforce such right of action was instituted within ten years next after the cause of action accrued, the action was barred by limitation under the provisions of this statute.

Cummings *vs.* Rosenberg *et al.*, 12 Ariz., 327.

The Arizona statute of limitations of ten years (Par. 2938, Civ. Code of 1901) is contained in Title 41 of the Revised Statutes of 1901. The act was approved by the Governor, March 21, 1901, and took effect the 1st day of September, 1901.

Cummings *vs.* Rosenberg, *supra.*

The statute speaks as of the date at which it takes effect.
Lewis' Sutherland Stat. Const., sec. 175.
Endlich Interpretation of Stat., sec. 489.

The appellee has been in possession of the premises since January 31, 1893 (Rec., p. 23), and appellant could have brought suit at any time thereafter. The plain import of the statute is that it applies to all rights of action existing on September 1, 1901. The language is: "Any person who *has a right of action.*" The statute in effect provides that in any suit commenced on or after September 1, 1901, the

facts and matters therein referred to shall constitute a bar to the action.

All persons were bound from the date of the approval of the act to take notice of its existence and terms.

Russell *vs.* Akeley Lumber Co., 45 Minn., 376.
Osborne *vs.* Lindstrom, 9 N. D. 1; 46 L. R. A., 745.

THE LEGISLATURE MAY PRESCRIBE A LIMITATION FOR THE BRINGING OF SUITS WHERE NONE PREVIOUSLY EXISTED THAT WILL OPERATE UPON RIGHTS OF ACTION WHICH ACCRUED BEFORE IT BECAME EFFECTIVE, PROVIDED ONLY THAT A REASONABLE TIME BE GIVEN BY THE NEW LAW FOR THE COMMENCEMENT OF SUIT BEFORE THE BAR TAKES EFFECT.

Wheeler *vs.* Jackson, 137 U. S., 245.
Terry *vs.* Anderson, 95 U. S., 628, 632.
Koshkonong *vs.* Burton, 104 U. S., 668.
Mitchell *vs.* Clark, 110 U. S., 633.
Soper *vs.* Lawrence Bros., 201 U. S., 359.
Bigelow *vs.* Bemis, 2 Allen (Mass.), 496.
Smith *vs.* Morrison, 22 Pick., 432.
Merchants Nat'l Bank *vs.* Braithwaite, 7 N. Dak., 358, and cases cited.
Hill *vs.* Townley, 45 Minn., 167.

A period of over five months elapsed between the passage of the act and the time of its taking effect, which, it is urged, was a reasonable time to institute suit. If at any time during said period this action had been commenced, the bar of the ten-years statute could not have been interposed. As the action was not commenced until after the time allowed by the legislature for bringing such actions had elapsed, and more than ten years after the cause of action accrued, the defense of the ten-years statute was available and the plaintiff's action was barred.

ACCORDING TO THE WEIGHT OF AUTHORITY, THE PERIOD BETWEEN THE PASSAGE OF THE ACT AND ITS GOING INTO EFFECT MAY BE CONSIDERED IN DETERMINING THE QUESTION OF REASONABLE TIME.

Cummings *vs.* Rosenberg, 12 Ariz., 327.
Lewis' Sutherland Stat. Const., sec. 707 and notes.
Osborn *vs.* Lindstrom, 9 N. Dak., 1.
Russell *vs.* Akeley Lumber Co., 45 Minn., 376.
Merchants Nat'l Bank *vs.* Braithwaite, 7 N. Dak., 358.
Wrightman *vs.* Boone Co., 82 Fed., 412.

It is presumed that the period of time between the enactment of the statute and the date when it is to become effective was intended by the legislature for the beginning of such actions as would be barred by the new statute upon its taking effect, and is due notice that such actions would be barred if not begun within that period.

In Bigelow *vs.* Bemis, 2 Allen (Mass.), 496, a period of five months and three days was held by the Supreme Court of Massachusetts to be a reasonable and sufficient time within which to bring the action before the bar of the statute could be operative.

In the case of Smith *vs.* Morrison, 22 Pick., 432, the same court held that the period of five months and twenty-six days was a reasonable period, and the court said: "Whether the time allowed for creditors to commence their action is reasonable time or not, was a question within the exclusive province of the legislature to determine."

In the case of Hill *vs.* Townley, 45 Minn., 167, the Supreme Court of Minnesota held that the period of six months was a reasonable time, and in the case of Russell *vs.* Akeley Lumber Co., 45 Minn., 376, the act was passed March 1, and by its terms took effect September 1, and the period thus allowed was held to be a reasonable time, and that this was a question for the legislature to determine.

The language employed in the Arizona statute admits of

no other construction than that it applies to all causes of action existing at the time it became effective on September 1, 1901.

Counsel for appellee submits that under the authorities cited, and particularly under the construction of the statute by the Supreme Court of Arizona in the case of Cummings *vs.* Rosenberg, *supra*, the ten-years statute operated to bar the appellant's right of action and to vest title in the appellee.

V.

Other errors are assigned in the brief of appellant, but not discussed, and no authorities are advanced in support of the propositions of law involved.

It is an elementary principle of pleading that the proper method of pleading the statute of limitations, or any other public statute, is by alleging the facts which bring the case within the statute.

Harpending *vs.* Reformed Prot. Dutch Church *et al.*, 16 Pet. (U. S.), 455, 487.
20 Enc. Pl. & Pr., 594, 595.

And the plea of the statute of limitations need not negative the exceptions to such statute. They are in the nature of matters of defense to come from the other side.

13 Enc. Pl. & Pr., 220, 221.
Codman *vs.* Rogers, 10 Pick., 111, 118.
McMillan *vs.* Cheeny, 30 Minn., 519.

With reference to appellant's ninth assignment of error, it is to be noted that par. 2937, Civ. Code Ariz., 1901, is identical with par. 2299, Civ. Code Ariz., 1887, and took effect upon the repeal of the latter statute. The text of both statutes is hereinabove quoted. The adverse possession of appellee under the recorded deed from James and Dodge is admitted to have been maintained with all its essential re-

quirements from February 17, 1893, the date when the deed was recorded (Rec., p. 21) until the institution of suit by appellant on November 16, 1903 (Rec., p. 23). The right of appellant was thus barred and his title divested and vested in the appellee under the statute of 1887, and before the enactment of the statute of 1901. It is, moreover, a familiar principle of statutory construction that the re-enactment of the identical statute neutralizes the repeal. The statute operates without interruption where the re-enactment takes effect at the same time, and is to be regarded as the law during the entire period of both statutes.

Lewis' Sutherland Stat. Const., sec. 238.

VI.

Adverse possession of land for the period fixed by the statute of limitations confers title thereto which may be quieted in an action brought for that purpose by the party asserting such title.

Pacheco *vs.* Wilson, 2 Ariz., 411.
Moody *vs.* Holcomb, 26 Tex., 714.
Smith *vs.* Montes, 11 Tex., 24.
Jones *vs.* Creech, 108 S. W., 975.
Glasscock *vs.* Dimmitt, 141 S. W., 822.
Ball *vs.* Filba, 153 S. W., 685.
Independent Dist. of Oak Dale *vs.* Fagen, 94 Ia., 676.
Lougee *vs.* Shubart *et al.*, 127 Ia., 173.
Quinn *vs.* Quinn, 76 Ia., 565.
Sharon *vs.* Tucker, 144 U. S., 533.
Campbell *vs.* Holt, 115 U. S., 620.

Appellant's sixth and seventh assignments of error are predicated upon the ruling of the Supreme Court of Arizona that adverse possession under the five and ten years' statutes of limitation can be pleaded as a defense and form the basis

of affirmative relief in an action to quiet title. No authorities are cited by appellant in support of these assignments, nor are they discussed in his brief. Before Arizona adopted the Texas statute of limitations the Supreme Court of Texas held that adverse possession of lands for the statutory period confers title which may be quieted in an action to quiet title brought by the party asserting such title.

Moody *vs.* Holcomb, 26 Tex., 714.

Smith *vs.* Montes, 11 Tex., 24.

In two cases recently decided by the Court of Civil Appeals of Texas, the actions were brought to remove cloud from title, the plaintiffs claiming title by adverse possession. In the suit of Glasscock *vs.* Dimmitt, 141 S. W., 822, a judgment of the lower court in favor of the plaintiff who established title by adverse possession under the five-years statute of limitation, was affirmed. In the other case, the plaintiff who brought the action to remove cloud and quiet title to 160 acres of land, basing his right upon the ten-years statute of limitation, established title by adverse possession under the statute, and the judgment in the lower court in his favor was affirmed by the Texas Court of Appeals.

Ball *vs.* Filla, 153 S. W., 685.

The right of a litigant to rely upon the statute of limitations in an action to quiet title has been recognized by the Supreme Court of Arizona for the past twenty-five years.

Pacheco *vs.* Wilson, 2 Ariz., 411.

The action in the present case is the statutory action to quiet title. The Arizona statute in relation thereto is found in Title 71, chapter 1, Civil Code of Arizona, 1901, and the first three sections of the chapter, being paragraphs 4104 to 4106, read as follows:

> "4104 (SECTION 1). An action to determine and quiet the title to real property may be brought by

any one having, or claiming, an interest therein, whether in or out of possession of the same, against any person or corporation, or the Territory of Arizona, when such person, corporation or Territory claims any estate or interest, adverse to the party bringing the suit, in or to the real estate, the title to which is to be determined or quieted by the action brought: *Provided, however*, That whenever the Territory of Arizona is made defendant in any such action, a copy of the summons and complaint shall be served upon the Secretary of the Territory and upon the Attorney General of the Territory, and it shall be the duty of the Attorney General to appear and defend the interests of the Territory involved in such action or actions.

"4105 (SEC. 2). The complaint therefore must be under oath, setting forth the nature and extent of his estate and describing the premises, and that he is credibly informed and believes the defendant makes some claims adverse to the complaint, and praying for the establishment of the complainant's estate, and that the defendant be barred and forever estopped from having or claiming any right or title to the premises adverse to the complainant.

"4106 (SEC. 3). If the defendant appears and disclaims all right and title adverse to the complainant, the defendant shall recover his costs. In all other cases the costs shall abide the result of the action."

The statute was taken from the State of Iowa. Sections 4223 to 4225, chapter 4, Title 21, Code of Iowa, 1897, read as follows:

"SECTION 4223. *Who May Bring Action.*—An action to determine and quiet the title of real property may be brought by any one, whether in or out of possession, having or claiming an interest therein, against any person claiming title thereto, though not in possession.

"SECTION 4224. *Notice.*—The petition therefor must be under oath, setting forth the nature and extent of his estate, and describing the premises as accurately as may be, and that he is credibly informed and believes the defendant makes some claims ad-

> verse to the petitioner, and praying for the establishment of the plaintiff's estate, and that the defendant be barred and forever estopped from having or claiming any right or title to the premises adverse to the plaintiff. The notice in such action shall accurately describe the property, and, in general terms, the nature and extent of the plaintiff's claim, and shall be served as in other cases.
>
> "SECTION 4225. *Disclaimer—Costs.*—If the defendant appears and disclaims all right and title adverse to the plaintiff, he shall recover his costs. In all other cases the costs shall be in the discretion of the court."

The Iowa courts hold that adverse possession under the statute of limitations is a perfect defense to such an action, and also that an action may be maintained to quiet title, founded upon, and acquired by, adverse possession. In the case of Independent District of Oak Dale *vs.* Fagen, 94 Ia., 676, the plaintiff, a corporation, brought suit to quiet its title to certain real estate which it had acquired by adverse possession, and the court, in affirming a decree for the plaintiff, said:

> "Actual adverse possession of real estate for ten years under a claim of absolute ownership creates a title by prescription, not merely for defensive, but for all practical purposes upon which an action to quiet the title may be maintained."

In the earlier Iowa case of Quinn *vs.* Quinn, 76 Ia., 565, which was an action brought to quiet title, the court, referring to the plaintiff, said:

> "He went into possession more than ten years before this suit was commenced, and has held the land adversely ever since. His adverse possession has ripened into a title which he can enforce against defendant."

In another Iowa case where plaintiff brought suit to quiet title to lands in the possession of the defendant, the latter

set up as a defense, title by adverse possession under the statute of limitations. The trial court found for defendant, and the Supreme Court of Iowa affirmed the judgment.

Longee *et al. vs.* Shubart, 127 Ia., 173.

The title acquired by adverse possession under the statute of limitations is title in fee. The statute of limitations invests the possessor with title as fully and effectually as if the title had been acquired by patent or by absolute conveyance from the holder in fee.

Bridges *vs.* Johnson, 69 Tex., 714, 717.
Moody *vs.* Holcomb, 26 Tex., 714, 719.
Hall *vs.* Law, 102 U. S., 461, 466.
Harpending *vs.* Reformed Prot. Dutch Church, 16 Pet. (U. S.), 455, 492.
Leflingwell *vs.* Warren, 2 Black. (U. S.), 599, 605.
Echols *vs.* Hubbard, 90 Ala., 399.
Murray *vs.* Hoyle, 97 Ala., 588.

In conclusion, it is urged that under the authorities cited, the title of appellee to the O'Dougherty and Big Johnny mines is a title in fee and indefeasible. As repeatedly held, title by adverse possession is not only a shield, it is a weapon. It can, both on principle and authority, be successfully asserted or interposed by the appellee whenever it is called in question, and regardless of the form of the action or proceeding in which it is assailed.

The facts sustain the judgment, and the judgment of the Supreme Court of the Territory of Arizona should be affirmed.

Respectfully submitted.

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